

i:

IN THE PRIVY COUNCIL

No.33 of 1963

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

B E T W E E N

ADERAWOS TIMBER COMPANY LIMITED

Defendants/
Appellants

and

1. BALE ADEDIRE
2. AWE ADENLOJI
3. SAMUEL ADETUNJI
4. EMAN. ADEYMO
5. E.T. ADEWOYIN
6. S.GIWA
7. B.F. SHOBALOU

Plaintiffs/
Respondents

and

THE CARETAKER COMMITTEE OF
THE IFE DIVISIONAL COUNCIL

Defendants/
Respondents

Proforma

RECORD OF PROCEEDINGS

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Exhibit Mark	Description of Document	Date	Page
"A"	Agreement (Ife District Native Authority and Aderawos Timber Trading Co. Ltd.	6th January 1954	58
"B"	Register of Members of the Aderawos Timber Co. Ltd.		Not reproduced

Exhibit Mark	Description	Date	
"C" and "C2"	Memorandum and Articles of Association of the Aderawos Timber Co. Ltd. as amended up to date		Not reproduced
"D. D5"	Balance Sheets of the Aderawos Timber Trading Co. Ltd. for years 1954 to 1959		Not reproduced
"E"	Order 80 of 1941 at Page 269 Laws of Nigeria Constituting the Ife Forest Reserve	1941	57
"E.1"	Western Region Laws of Nigeria No.2 of 1954 amending Order 80 of 1941 Laws of Nigeria	1954	58
"F"	Certificate of Incorporation		Not reproduced
"G"	Registration of Business Names		Not reproduced
"H"	Particulars of Directors or Managers		Not reproduced

DOCUMENTS TRANSMITTED TO THE PRIVY
COUNCIL BUT NOT REPRODUCED

IN THE HIGH COURT OF JUSTICE
WESTERN REGION OF NIGERIA
IBADAN JUDICIAL DIVISION

Court Notes as to Pleadings 5th January 1960

Court Notes fixing hearing 4th April 1960

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Court Notes on conditions of Appeal 14th October 1960

Bond for Costs on Appeal 12th November 1960

Civil Forms 5 and 6 9th October 1961

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Formal Order granting Conditional Leave to Appeal	29th April 1963
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Bond for Costs on Appeal	27th May 1963
Court Notes	17th, 27th & 31st May 1963
Formal Order granting Stay of Execution	31st May 1963
Motion with Affidavit for Final Leave to Appeal	3rd June 1963
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1.

IN THE PRIVY COUNCIL

No.33 of 1963

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

B E T W E E N :-

ADERAWOS TIMBER COMPANY LIMITED

Defendants/
Appellants

- and -

- 1. BALE ADEDIRE
- 2. AWE ADENIJI
- 10 3. SAMUEL ADATUNJI
- 4. EMAN. ADEYEMO
- 5. E.T. ADEWOLAN
- 6. S. GIWA
- 7. B.F. SHOHALOJU

Plaintiffs/
Respondents

- and -

THE CARETAKER COMMITTEE OF THE
IFE DIVISIONAL COUNCIL

Defendants/
Respondents
Proforma

RECORD OF PROCEEDINGS

No. 1

20

WRIT OF SUMMONS

In the High
Court of
Justice

IN THE HIGH COURT OF JUSTICE
WESTERN REGION OF NIGERIA
IBADAN JUDICIAL DIVISION

No.1
Writ of
Summons
8th December
1959

B E T W E E N:

BALE ADEDIRE and 6 OTHERS

Plaintiffs

and

THE CARETAKER COMMITTEE OF THE
IFE DIVISIONAL COUNCIL & ANOR.

Defendant

30

ELIZABETH II, by the grace of God of the
United Kingdom of Great Britain and Northern
Ireland and her other realms and territories,
Queen, Head of the Commonwealth, Defender of the
Faith:

In the High
Court of
Justice

TO: The Caretaker Committee of the Ife
Divisional Council and Aderawos Timber Company
Ltd. of ... As per the attached Address

No. 1
Writ of
Summons
8th December
1959
continued

We command you to attend this Court holden
at _____ on Monday the 4th day of
January 1960 at _____ o'clock in the forenoon
to answer a suit by Bale Adedire and 6 others of
... As per the attached address.. against you.

The Plaintiff's claim is indorsed on the
reverse side hereof.

10

TAKE NOTICE that if you fail to attend at
the hearing of the suit or at any continuation
or adjournment thereof, the court may allow the
plaintiff to proceed to judgment and execution.

SIGNED AND SEALED this 8th day of
December 1959.

(L.S.)

WRIT OF SUMMONS
INDORSEMENTS

1. The Plaintiff's claim is ... As per the
attached particulars.
2. The Plaintiff's address for service is
3. The address of the Plaintiff's Solicitor is
109 Agbeni Street, Ibadan.
4. Other Indorsements (when required by law)

20

AYOOLA & OWOTOMO

Signature of Solicitor for Plaintiff

No. 2

PARTICULARS OF CLAIM

In the High Court of Justice

IN THE HIGH COURT OF JUSTICE
WESTERN REGION OF NIGERIA
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

Suit No.1/212/59

No.2
Particulars of Claim
4th December 1959

B E T W E E N :

- | | | |
|----|--|-------------------|
| 10 | 1. BALE ADEDIRE)
2. AWE ADENIJI)
3. SAMUEL ADETUNJI)
4. EMAN. ADEYEMO)
5. E.T. ADEWOYIN)
6. S. GIJA)
7. B.F. SHOBALOJU) | <u>Plaintiffs</u> |
|----|--|-------------------|

- and -

- | | | |
|----|---|------------|
| 20 | 1. THE CARETAKER COMMITTEE OF THE)
IFE DIVISIONAL COUNCIL)
2. ADERAWOS TIMBER COMPANY LIMITED) | Defendants |
|----|---|------------|

The Plaintiffs, members of the Ife Community, jointly and severally claim against the Defendants jointly and severally:-

- i. A Declaration that the Deed of "Concession" dated 6th of January 1954 and registered as Instrument No.16 at page 16 volume 54, Register of Deeds, Lands registry, Ibadan purported to have been entered into by the Ife District Native Authority on the one part AND the 2nd Defendant on the other part is irregular and contrary to equity and liable to be set aside;
- ii. An order to set aside the aforesaid Deed.
- iii. Against the 2nd Defendant, and Account of all profits derived pursuant and by virtue of the "Concession" conferred on them by the aforesaid Deed, and an order that the sum found on such account be paid into Ife Divisional Council Treasury for public use and benefit.
- iv. Against the 2nd Defendant, an injunction to restrain them from further exploiting of the "concession", the subject-matter of the

In the High Court of Justice

aforesaid Deed.

Dated this 4th day of December, 1959.

No.2

Plaintiffs' Address:-

Particulars of Claim
4th December 1959
continued

c/o Their Solicitors,
Ayoola & Owotome,
Agbeni Street,
IBADAN.

No.3

No. 3

Statement of Claim
4th February 1960

IN THE HIGH COURT OF JUSTICE
WESTERN REGION OF NIGERIA
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

10

Suit No. 1/212/59

B E T W E E N :-

BALE ADEDIRE & OTHERS Plaintiffs

- and -

1. THE CARETAKER COMMITTEE }
OF THE IFE DIVISIONAL } Defendants
COUNCIL }
2. ADERAWOS TIMBER CO. LTD. }

20

STATEMENT OF CLAIM

1. The Plaintiffs are members of Ife Community and bring this action by virtue of being members and Taxpayers thereat.

2. The forest area the subject-matter of the "Concession" in the Instrument registered as No.16 at page 16 in Volume 54, Register of Deeds, Lands Registry, Ibadan is the Communal Property of the Ife Community.

3. The aforesaid property was held in trust for the said community by the Ife District Native Authority, the successor of rights and duties of which is now the 1st Defendant.

30

4. At all dates material to the Deed of "Concession" registered as No.16 at page 16 in Volume 54 Register of Deeds, Lands Registry Ibadan, Sir Adesoni Aderemi, the Oni of Ife was

5.

the trustee of Ife Communal lands.

5. At all times material to the aforesaid Deed of Concession, Sir Adesoji Aderemi, the Oni of Ife was a Principal member of the Aderawos Timber Company Limited.

6. The Aderawo Timber Company Ltd. is a private company, the membership of which in 1954 was two, Sir Adesoji Aderemi, the Oni of Ife and one Awo, a forestry Officer of the Ife District Native Authority, hence the name Aderawos Timber Company Limited.

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7. In 1954 Sir Adesoji Aderemi, then as the Oni and Council "on behalf of the Ife District Native Authority" granted a concession of the Ife Forest to Aderawos Timber Company Limited as contained in the Instrument registered as No.16 at page 16 in Volume 54 Register of Lands, Ibadan.

20

8. Sir Adesoji Aderemi, the Oni of Ife, concluded the said Instrument on behalf of each side to the purported contract, purporting to act in a dual capacity.

9. The aforesaid deed of concession is in the circumstances unfair, irregular and contrary to equity and liable to be set aside in that the Oni of Ife acted on both sides in a transaction in which he had a personal interest in possible conflict with his duty as trustee of Communal lands.

30

10. The Aderawos Timber Company Limited has since April 1954 made substantial profits from the said concession and have refused in collaboration with the 1st Defendant to release the concession to the Ife Community despite repeated demands.

Wherefore the Plaintiffs claim as per their writ.

DATED this 4th day of February, 1960.

(Sgd.) AYoola & OWOTOMO

Plaintiffs' Solicitors.

In the High
Court of
Justice

No.3

Statement
of Claim
4th February
1960
continued

In the High Court of Justice

No.4

Statement of Defence of First Defendants 11th February 1960

No. 4

STATEMENT OF DEFENCE OF FIRST DEFENDANTS

IN THE HIGH COURT OF JUSTICE
WESTERN REGION OF NIGERIA
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

Suit No.1/212/59

B E T W E E N :-

BALE ADEDIRE & OTHERS

Plaintiffs

- and -

10

- 1. THE CARETAKER COMMITTEE OF)
- THE IFE DIVISIONAL COUNCIL)
- 2. ADERAWOS TIMBER CO. LTD.)

Defendants

STATEMENT OF DEFENCE BY FIRST DEFENDANTS

1. Save and except as are hereinafter specifically admitted the defendants deny each and every allegation of fact contained in the Statement of Claim as if each were set out Seriatim and separately denied.

2. The first defendants will contend at the trial of this action that the plaintiffs' claim to relief is barred or extinguished by section 62 of the Native Authority Ordinance Cap 140 Laws of Nigeria and/or section 242 of the Local Government Law, 1957. 20

DATED at Ibadan this 11th day of February 1960.

(Sgd.) F.R.A. Williams

Counsel to 1st Defendants

Filed this 11th day of February 1960

(Sgd.) SYDNEY FORESYTHE.

No. 5

STATEMENT OF DEFENCE
OF SECOND DEFENDANTS

In the High
Court of
Justice

No.5

Statement of
Defence of
Second
Defendants
11th February
1960

IN THE HIGH COURT OF JUSTICE
WESTERN REGION OF NIGERIA
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

Suit No.1/212/59

B E T W E E N :-

BALE ADEDIRE & OTHERS

Plaintiffs

- and -

- 1. THE CARETAKER COMMITTEE OF)
- THE IFE DIVISIONAL COUNCIL)
- 2. ADERAWOS TIMBER CO. LTD.)

Defendants

STATEMENT OF DEFENCE
BY SECOND DEFENDANTS

1. Save and except as are hereinafter specifically admitted the defendants deny each and every allegation of fact contained in the Statement of Claim as if each were set out Seriatim and separately denied.

2. The second defendants aver that the forest area comprised in the instrument described in paragraph 2 of the Statement of Claim was duly constituted a forest reserve under the Forestry Ordinance.

3. With further reference to paragraphs 2 and 3 of the Statement of Claim the defendants aver that the plaintiffs have no right in or over the area of the land in dispute in this case.

4. The second defendants aver that the Deed described in paragraphs 2, 4 and 7 of the Statement of Claim was duly made in pursuance of powers vested in the Native Authority by law.

Whereupon the 2nd defendants say that the plaintiffs are not entitled to the relief prayed for.

Dated at Ibadan this 11th day of February, 1960.

(Sgd.) F.R.A. Williams

Counsel to the 2nd Defendants.

In the High
Court of
Justice

No. 6

COURT NOTES ON HEARING

No.6
Court Notes
on Hearing
10th June 1960

HOLDEN AT IBADAN
BEFORE THE HONOURABLE MR. JUSTICE J.A.KESTER
AG. JUDGE
FRIDAY THE 10th DAY OF JUNE, 1960

Suit No.1/212/59.

Parties present:

AYOOLA for the Plaintiffs.
F.R.A.WILLIAMS, Q.C. and ADEREMI for the Defendants. 10

Williams informs court that he received a letter dated 27/5/60 from plaintiffs' Solicitor asking that all the documents to be produced. The Notice to Produce was not filed in Court as laid down in the Evidence Ordinance but he is waiving the objection. The following documents are produced by the defendants and admitted in evidence by consent.

(1) The Deed Registered as No.16 at page 16 in Volume 54 Registrar of Deeds Lands Registry Ibadan marked Exhibit "A". 20

(2) The Register or members of the Aderawos Timber Co. Ltd. and marked Exhibit "B".

(3) Memorandum and Articles of Association of the Aderawos Timber Co. Ltd. as amended up to date marked Exhibits C, C1 and C2.

(4) Balance sheets of the Aderawos Timber Co. Ltd. for the years 1954 to 1959 marked Exhibits D, D1, D2, D3, D4 and D5. 30

As to the Constitution of the Ife Forest Reserve Williams refers to Order 80 of 1941 at page B 269 of 1941 Laws of Nigeria as amended by Western Region Legal Notice 2 of 1954 at page B2 of 1954 Laws of the Western Region of Nigeria.

This is one of the particulars Counsel for Plaintiff gave Notice to produce.

Order 80 of 1941 marked Exhibit "E".
 W.R.L.N.No.2 of 1954 amending Order 80 of 1941
 is marked Exhibit "E1".

In the High
 Court of
 Justice

No.6

Court Notes
 on Hearing
 10th June 1960
 continued

10 The Notice to Produce also calls for all
 minutes of the Ife District Council wherein the
 matter of the "Concession" was raised. Williams
 says that there are no such minutes in defendants'
 possession. Ayoola produces the Certificate of
 Incorporation of the Aderawos Timber Co. Ltd. and
 admitted in evidence by consent marked Exhibit "F".
 Ayoola produces registration of business name of
 Aderawos Timber Trading Co. Document admitted in
 evidence and by consent and marked Ex. "G".
 Particulars of directors etc. of the Aderawos
 Timber Co. Ltd. produced by the plaintiff and
 admitted by consent marked Ex. "H".

20 Ayoola says that the issue involved is whether
 Exhibit A the Deed of "Concession" is valid or
 invalid. It is the contention of the plaintiffs
 that the deed is invalid on its face without
 further evidence because the person who signed as
 grantor signed also as grantee even though in
 different capacities. This is contrary to Law
 and Equity. Conflict of duty and interest must
 come into issue. If this is so any beneficiary
 who can establish that he is a beneficiary or a
 Citizen of the area or a Tax payer of the area
 in which the Forest is situated can sue to set aside
 this deed and claim profits which may have thereby
 30 been made in breach of Trust. The defence joined
 issue on the point that the area was constituted a
 Forest Reserve and that the Plaintiffs have no right
 over the area. The 1st defendant pleaded limitations.

PLAINTIFFS EVIDENCE

No.7

ADEDIRE OGUNLEYE

Plaintiffs
 Evidence

No.7

Ayoola calls 1st Plaintiff to give evidence.
 1st Plaintiff/Sworn states on Bible in Yoruba:-

Adedire
 Ogunleye

40 I am ADEDIRE OGUNLEYE. I am also the Bale
 (Head) of Adedire Agbedegbede Compound Ile-Ife.
 I was formerly an Elephant hunter. I was a
 member of the Hunters guild at Ile-Ife. My name
 is Adedire. I am the Bale (Head) of Agbedegbede
 Compound. My ancestors' name is Ogunleye. I know
 the forest which is the subject matter of this
 case. I am a native of Ile-Ife. I am a tax payer

10th June 1960

In the High
Court of
Justice

at Ilfe-Ife. I was born and bred in that forest. I hunted and farmed some portions of the forest. This was before it was made a forest Reserve.

Plaintiffs
Evidence

No.7

Adedire
Ogunleye
10th June 1960
continued
Objection

I was not consulted by the Oni before the concession was granted to Aderawos Timber Co. Ltd. to cut timber in the forest. This is not the only reason why I brought this action. The action is by the whole community of Ife and I am the Leader of the people who owned farms in the Forest Reserve.

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At this stage Williams objects to the piece of evidence that 1st plaintiff or the plaintiffs for that matter are suing on behalf of the whole community of Ife or in any representative capacity. There is nothing in the statement of claim to support the evidence that the action is brought in a representative capacity. To allow it would amount to taking the defence by surprise. Ayoola says that an amendment can be allowed at this stage to show that the action is brought in a representative capacity. Cites case of Lawani Ladeji v. Daini Odumaja 17 W.L.R.15. The title of the suit can be amended to avoid multiplicity of action. Cites case of Bolo versus T.A.ANTONY 1 WACA 169. Williams withdraws objection.

20

Evidence
Continues.

I am the leader of the people who owned farms in the Reserve.

Q. by Ayoola:- Have you the authority of this people you refer to in your evidence?

Objection

Williams objects to the question on the ground that the plaintiffs have not pleaded in their Statement of Claim that they have such authority. His instructions are that they have no authority to represent anybody outside themselves. He will be taken by surprise if called upon to deny existence of authority.

Ayoola says that since the defence did not object to the piece of evidence that this action was brought by the whole Community of Ife the question as to authority now asked becomes relevant to the piece of evidence about the whole Community and on record; and becomes of very great importance to the Court itself to decide whether this is a case in which the Court might

use its power to amend the title of the suit o
as to bring an end to litigation and deal with
the substance of the case.

In the High
Court of
Justice

It is a question which the Court
itself could have asked. If the other side is
taken by surprise, they can have time to meet
that allegation on terms.

Plaintiffs
Evidence...

No.7

Adedire
Ogunleye
10th June 1960
continued

Objection
continued

Ruling

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RULING: Although there is power in the Court to
allow amendments at any stage of a proceeding but
the power or discretion can and should only be
exercised in a way that the other party will not
be embarrassed. In this case the Plaintiffs,
7 of them, brought the action in their personal
capacities. There is nothing in the title of
the case nor in the Statement of Claim to show
that they are suing in a representative capacity.
No doubt issue was joined on this score and in my
view it would be embarrassing to the otherside to
allow evidence to be given that the action is a
representative one and that the Plaintiffs have
authority (Not pleaded) to bring it. I uphold
objection and disallow the question. I am also
not disposed to grant an amendment to the title of
the case. That portion of witness's evidence is
expunged.

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Cross-examined by Williams: I am the Head of the
Ogunleye family. Some members of the Ogunleye
family still farm in part of the reserve. Some
members of the Ogunleye family are still hunting
in the part of the Reserve. I have not brought
this action because the Oni and I contested for
the throne of Ife and I lost. Sir Adesoji took
the throne from me. Sir Adesoji Aderemi is my son.

Cross-
examination

Re-examined: Nil.

Case for the Plaintiffs

Williams calls no evidence.

In the High
Court of
Justice

No. 8

Counsel's Addresses

No.8

(a) AYOOLA FOR PLAINTIFFS

Counsels
Addresses

(a) Ayoola
for Plaintiffs
10th June 1960

Ayoola Addresses:- This action is to set aside Exhibit A Deed of Conveyance granted by the Ife Native Authority to the 2nd Defendant. At the time the deed was made the sole Native Authority in Ife was Sir Adesoji Aderemi, the Oni of Ife; who in Exhibit A purported to sign in 2 capacities viz. as Head of Ife Community and Sole Native Authority on the one hand and as a member of the Aderawos Timber Company on the other side. At the time the property so dealt with was declared in the deed to be communal property which by a long time of decisions is held to be vested in the Head of the Community as Trustee of the members of that Community. On the side of the grantee he signed as a member of the Aderawos Timber Co. The Oni of Ife Sir Adesoji Aderemi was at the time one of the directors of the Company which consisted of three individuals to wit, himself, one Adedapo Aderemi and one Awoshiyan who described himself as a Timber Contractor. Without going further that deed is patently void as it falls within the four corners of the decision in Regal Hastings versus Gulliver 1942 1 A.E.R.378 at page 381.

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In that case a member of a Company signed a document in 2 capacities one as director of Company 'A' and in the other as a member of Company 'B'. The agreement was held to be void-able in Equity quite apart from the question of its fairness or unfairness. Case of Ellis v. Kerr 1910 1 CH.D. page 529 at page 539. It was held that it made no difference that there were other persons signing with him on the other side of the contract. Case of Napier v. Williams 1911 1 CH page 361 at page 268. Some point was upheld with reference to Ellis v. Kerr. Re Thompson 1930 1 CH.203 at page 215. Refers also to the case of Aberdeen Town Council v. Aberdeen Community 1877 2 A.C. page 544 where it was held that a beneficiary can sue to set aside such sale without proof of loss. Case of Aberdeen Railway Co. v. Blochie Brothers 1 Macqueen 461 quoted in Keeton on Trusts 4th Edition page 305. The House of Lords held that it is a rigid rule that a Trustee of property can never validly enter into contract with himself no matter whether the

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agreement is fair or not. It was further held that the proper procedure is to apply to Court. If these propositions are accepted then the next question is, does it make a difference that the person who signed on both sides of the contract signed in two different capacities. In the first instance as representing the Community and Native Authority and on the other as representing the Aderawos Timber Co. Submits that it makes no difference in Common Law. The case of Ellis v. Kerr supports that point. It makes no difference at Common Law unless there is statutory authority permitting it. Salmond on Jurisprudence 10th Edition page 324. Does it make a difference to the result that the Cloak of a limited Company was used? Where Trust property is involved the veil of Corporation is always lifted by the Court. So also where improper contract is alleged in an individual. Case of Smith, Stone and Knight v. Birmingham Corporation 1939 4 A.E.R. 116. Gower on Company Law 2nd Edition page 208.

Exhibit "A" creates an estoppel which binds the Aderawos Timber Co. Estoppel by deed. In that deed the property being dealt with has been described as Communal land; in which event any member of the Ibe Community has an interest as the Head is only a Trustee of that land only for the community. If the right of the community is infringed can any member of the community bring an action or must he wait until the other members agree, particularly when the matter in issue is the conduct of Head of that Community. Each and every member of that Community has a right to bring an action independent of other members of the Community. The right is joint and several. Case of Robert v. Holland 1893 1 Q.B. 665. Lauri v. Renad 1892 3 CH.402 page 412. Order 7 rule 10(1) High Court Rules. As to the constitution of the Reserve Order 80 of 1941 as amended by W.R.L.N. No.2 of 1954 Exhibit E. and El refer. Order 80 of 1941 in its 2nd Schedule reserve the right of Ogunleye and his descendants to reside in the forest and to hunt and to farm and fish there. The Amendment Exhibit El deleted the right to reside. The right is to a part of the forest. That part forms part of the subject matter in Exhibit A which is indivisible. Right in the order is not equivalent to "interest". One can have the right and not the interest. "Interest" is part of the intrinsic nature of the property. The

In the High
Court of
Justice

—
No.8

Counsels
Addresses

(a) Ayoola
for Plaintiffs

10th June 1960
continued

In the High
Court of
Justice

—
No.8

Counsels
Addresses

(a) Ayoola
for Plaintiffs

10th June 1960
continued

fact that the land is made a Forest Reserve does not destroy its basic communal Nature, and all its customary incidents. The Reserve is still there. Cites case of Adeyinka Oyekan v. Adele Privy Council Appeal No.39 of 1953 refers to para 2 of the Statement of Defence filed on behalf of the 1st Defendant - Limitation Sec.62 of the Native Authority Ordinance Cap. 140 L/N now amended as section 242 of the Local Government Law 1957. Submits that the Limitation does not avail the 1st Defendant in so long that there is still a continuation of the damage or injury complained of. The concession is still in force. It has not ceased. When it comes to matter of Trust the rule of Limitation is different. Cites Re Timmis 1902 1 CH.176, An express Trustee cannot plead statute of Limitation particularly where it had himself. The balance sheets Exhibits D, D1 - D5 refers.

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Asks that the action be upheld.

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(b) Williams
for Defendants

(b) WILLIAMS FOR DEFENDANTS

Williams in reply says he likes to correct some mistakes made by the Plaintiffs before proceeding to deal with the case for the Defence. Counsel for Plaintiffs said that the Company consisted of Sir Adesoji, one Adedapo Aderemi and one Awoshiyan. Says that in actual fact there are only 2 members - Pages 4 and 5 of Exhibit B. M.A.Aderemi was a director and not a shareholder of the company. He was a director up to 1957. He was not a member of the company in 1954 or at any time. He ceased to be a director as from 1/4/57. Refers to para. 6 of the Statement of Claim which says that there were 2 members of the company shareholders in 1954. Counsel for Plaintiff alleged that the Oni of Ife Sir Adesoji was the Sole Native Authority for Ife in 1954 at the time of the contract. He was not. Refers to West Region Public Notice No.6 of 1952 which amends the list of Native Authorities shown under the 1943 Ordinance. It shows that the Ife District Council was the Native Authority for Ife District. If Town Council was Native Authority for Ife Town. Therefore in 1954 Oni was no sole Native Authority. In fact since 1952 there were no Sole Native Authorities in the Western Region of Nigeria.

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The position of the 1st Defendants:- The Ife
 Caretaker Committee of the Ife Divisional Council.
 Refers to Western Region Legal Notice No.251 of
 1955 at page B 725 Laws of the West. This shows
 that the Ife Divisional Council was established
 on 15/10/55 under the Local Government Law of
 1952. As from 15/10/55 the Native Authority had
 ceased to exist in Ife by virtue of Section 227(1)
 of the Western Region Local Government Law 1952.
 10 The 1952 Local Government Law was repealed by the
 Local Government Law 1957 Section 285 with
 effect from 12/4/57 but Section 264 of the 1957
 Law treats all Councils established under the
 1952 Law as if they were made under the 1957
 Law. By Western Region Legal Notice 501 of
 1959 at page B 644 an order was made under
 Section 86(1)(b) of this Local Government Law
 1957. The order referred to declared the seats
 of the President and members of the Divisional
 20 Council Vacant. It sets up a Committee of
 Management before this action was instituted.
 Section 86 of the 1957 Local Government Law was
 amended by Western Region Law No.40 of 1957.
 The Governor in Council declared the seats of the
 President and all members of the Ife Divisional
 Council vacant and appointed a Committee of
 Management. Submits that a Council does not
 cease to exist because an order declaring the
 seats of its members vacant was made. The
 30 Council still exists but its functions are now
 performed by the Committee of Management. There
 is no such body as the Caretaker Committee of
 the Ife Divisional Council. It may be more
 accurate to describe the 1st Defendant as Committee
 of Management of the Ife Divisional Council.
 Submits that 1st Defendant should have been
 described as the Ife Divisional Council. The
 instrument creating the Council has not been
 reached as it could be under Section 8 of the Law.
 40 Says that a misnomer should not ordinarily defeat
 the Plaintiffs' claim. He has no objection to
 Plaintiffs deleting the words "The Caretaker
 Committee of" from the title of the case as
 given to 1st Defendant as well as the Statement
 of Claim. Ayoola says he is not asking for an,
 amendment of the description of the 1st Defendant.
 He does not agree that there is a misnomer. If
 however the Court holds that there is a misnomer
 then he will ask for amendment of the description
 of the 1st Defendant.

In the High
 Court of
 Justice

 No.8

Counsels
 Addresses

(b) Williams
 for Defendants
 10th June 1960
 continued

In the High
Court of
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No.8

Counsels
Addresses

(b) Williams
for Defendants

10th June 1960
continued

Williams says that in view of the fact that Counsel for the Plaintiffs is not asking for an amendment as to the description of the 1st Defendant, submits that the wrong person is before the Court. The Court cannot make a decision as to what is in the mind of Counsel for the Plaintiffs as to the person he intended to bring to Court. He should decide and since he had said there was no misnomer it must be taken that he has brought the person he intended to bring to Court. Submits there is no such person in Law. Plaintiff cannot say that I sue 'A' and since 'A' does not exist then I sue 'B'. If the Court upholds this submission then the case is out of Court because the Court cannot set aside the deed when all the parties are not before the Court. The proper party to be before the Court is the Ife Divisional Council. If even the Ife Divisional Council were party before the Court Plaintiffs cannot succeed. The statutory Defence raised would have applied to the Ife Divisional Council if they were before the Court. Refers to Section 62(1) of the Native Authority Ordinance Cap. 140 L/N. and section 242 of the Local Government Law 1947. Both sections are in identical terms. Word for word. Counsel for Plaintiffs says the case is one of continuance of damage or injury and that the Statute will not apply. Submits that this is wrong. All that should be shown is that the Authority concerned execute the deed in execution of an ordinance. If the deed was executed in exercise of powers vested in the Authority by Ordinance which includes rules etc. then the Act is protected by the statutory defence. Refers to the Deed - Exhibit A. The opening part of it. The Act was clearly done, under powers conferred by Rule 40 of the Forestry Rules. The moment the deed was executed the act is completed. Submits that the course of action arose on the day the deed was executed. Refers Limitation of Acts by Franks 1st Edition page 11.

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The present case is not one of continuing injury or trespass. The Plaintiffs' case is that the Oni in one capacity or the other granted to himself a concession by the deed Exhibit A. Submits that the course of action, if any, arose the day the deed was signed. The deed was made on 6/1/54 and 6 months after that date any right of action against the Native Authority on the deed must be extinguished. "Such suit shall not lie or

be instituted unless it is brought within 6 months". In the High
 Section 62 of the Native Authority Ordinance Cap. 140. The Ife District Native Authority ceased to
 exist on 15/10/55. Assuming that Plaintiffs have a right of action against the Native Authority
 such right no longer exists after the 15/10/55. Refers to Section 222 of the Local Government Law
 1952. The right of action can survive if the Regional Authority gives a direction to that
 effect.

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 Court of
 Justice

 No.8
 Counsels
 Addresses
 (b) Williams
 for Defendants
 10th June 1960
 continued

10

Section 222(1) & (2) of the Local Government
 Law 1952. The Local Government Law 1957 did not
 originally contain any such section like 222(1)
 and (2) of the 1952 Law. But 222(1) was re-enacted as
 Section 282B of the 1957 Law. It was inserted
 by Law No.49 of 1958. The Minister can by direction
 pass the rights and obligations of a Native
 Authority which had ceased to exist to a Local
 Government Council which replaced it. But the
 Statutory power to pass rights of action which
 had ceased against the Native Authority to a Local
 Government Council which replaced it was omitted from
 the 1958 Law. W.R.L.N.484 of 1958 page B759 of
 1958 Laws of the West. This direction arranged
 the rights and obligations of Ife Divisional
 Native Authority to the Ife Divisional Council
 as regard Exhibit "A". There is nobody known
 in Law as Ife Divisional Native Authority -
 this is a misnomer. Cites Chancellor of Oxford
 v. Bishop of Coventry 1615 referred to in Craies
 on Statute Law 5th Edition 494. Asks Court to
 hold that the misnomer refers to the Ife District
 Native Authority. Ayoola agrees. The Ife
 Divisional Council stepped into the shoes of the
 Native Authority.

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Section 282B of 1955 Law - has the effect of
 making the Ife Divisional Council a party to
 Exhibit "A". The Law deems the Divisional Council
 to be a party to the deed even if the Oni was the
 Sole Native Authority which he was not at the time
 the deed was signed.

40

Adjd. 11/6/60.

(Sgd.) John A. Kester.

Ag. Judge.

In the High
Court of
Justice
No. 8
Counsel
Addresses
(b) Williams
for Defendants
11th June 1960

BEFORE THE HONOURABLE MR. JUSTICE J.A.KESTER
AG. JUDGE

SATURDAY THE 11th DAY OF JUNE, 1960.

Parties present:

Ayoola for Plaintiffs.
F.R.A.Williams, Q.C. and Aderemi for the
Defendants.

Williams continues his address.

Constitution of the concession in dispute as a
Forest Reserve

10

The first question the Court has to consider
is who owned the concession area before it was
made a "Reserve".

Refers to para. 2 of the Statement of Claim
which says that the Forest area the subject matter
of the concession is the communal property of the
Ife Community. Both the Defendants denied para. of
the Statement of Claim. There is no proof of
this allegation. What the only witness called said
was that he was born and bred in the forest; and
that he and other members of the Ogunleye family
farmed and hunted in the forest. Submits this does
not amount to proof that the land is or was communal
land. That being so the action must fail. They say
Community own the land, but they have not proved it.
Refers to Exhibit E and E1 which constituted the
area to a reserve. Refers also the schedule to
Exhibit 'A' which shows that the concession area
dealt with by the deed is within the Ife Native
Authority Forest Reserve. The power to constitute
a Forest Reserve is contained in Forestry
Ordinance Cap. 75 Vol. II/L/N - See Section 22
Orders made in Exhibit E and E1 were made in
accordance with Section 22 of the Forestry
Ordinance Cap. 75 Section 27 of the Forestry
Ordinance is important with the exception of
rights reserved in the order constituting the
Forest, all other rights are extinguished. The
meaning of Section 27 is clear. Submits that the
effect of that Section 27 is that the right of the
Community to grant a concession in respect of the
Concession area no longer exist. This also
includes the Beneficial rights of the Community
as well.

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The rights are extinguished for ever - see Section 29 of the Forest Ordinance. The person who now owns the forest is the Native Authority and not the Community of the original owners.

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Court of
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Refers to Section 33 deals with the administration of Native Authority Forest Reserves. The effect of Section 33(1) is to enable the Native Authority to grant concessions.

Counsels
Addresses

(b) Williams
for Defendants

11th June 1960
continued

10 The word "immigrant"
granting Concession.

Section 28 - refers to rights reserved under Section 27. The rules made under the Forestry Ordinance are in Vol. VIII L/N page 117. Refers to Regulation-40 The regulation had been amended before the signing of the Deed - Exhibit "A". It was amended by the Native Authority Public Notice No.58 of 1948 at page 482 of the 1948-49 Laws of Nigeria.

20 "40 - The owners of protected trees with the approval of the Governor may grant licences conferring on the holders the exclusive right to take timber within an area or areas defined in such licences".

What are protected trees? This is defined in Section 2 of the Forestry Ordinance Cap. 75. Protected trees under regulation 40 will include not only trees in a protected forest but also protected trees wherever they may be.

Regulation 3 of the Forestry Rules - Any tree may be declared to be a protected tree.

30 Who are the owners of these trees? The answer can be found by looking at the Ordinance and Regulation as a whole.

40 Those who owned the area before it was constituted a Reserve cannot be the owners of the trees, because under Section 27 of the Ordinance their rights are extinguished. The provisions of Section 33 by themselves are not sufficient to constitute the Native Authority as owners as contemplated by Regulation 40. Refers to the Heading of Part III of the Ordinance Special Provisions relating to Native Authority Forest Reserves. Were they called Native Authority Forest Reserves because the Native Authority manage them or because they own them. Submits

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Counsels
Addresses

(b) Williams
for Defendants

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continued

that it was not the intention of the Legislature to constitute the Native Authority as a Trustee of these forests. The Native Authority cannot be Trustees of these forests in view of the provision of 27 and the description of the Forests as Native Authority Forest Reserves. This can only mean one thing and that is that the Forest Reserves belong to the Native Authority.

What has the Ife Native Authority done with this Forest Reserve? All that they did was to grant to the 2nd Defendant right to enter the Reserve and to take Forest Produce - Exhibit "A". Apart from Regulation 40, the action of the Ife Native Authority is within their competence as provided for under Section 33.

10

The Deed Exhibit "A" was validly made by the Native Authority and cannot be set aside.

Refers to paras. 3 and 4 of the Statement of Claim. Para 3 shows clearly that the Ife District Native Authority were the Trustees of the Community. Para 4. This says the Sir Adesoji Aderemi, the Oni of Ife was Trustee of Council lands in Ife. There are two contradictory averments here. Submits there is no question of trusts on the facts of this case because -

20

(i) it has not been proved that the Community has an interest in this property

(ii) a Forest Reserve is a creature of Statute and no trust can arise unless under the provisions of a Statute

30

(iii) since all rights are extinguished under Section 27 of the Ordinance, nobody can be trustee for the community in respect of the Forest Reserve. This being so, all the Trust cases cited by Counsel for the Plaintiff cannot apply. If even they apply none of them go as far as Counsel had submitted that they do. Case of Regal v. Gilbert 1942 1 A.E.R. 378 and 381. The facts in this case do not support the Plaintiff submission. Case of Ellis and Kerr 1910 1 CH 529 539. Nothing in the case to support submission by Counsel. It is a case dealing with the enforcement of covenants. Submits that Plaintiffs' action must fail for the following reasons:-

40

(1) That it has not been proved that the Community has any interest in the land.

(2) Nobody today apart from the Ife Divisional Council and the person named in the Order reserving the Forest have any right in or over the land in the concession area. It is not alleged that rights reserved under the Order constituting the Forest are violated.

In the High Court of Justice

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Counsels Addresses

(3) The course of action if any against the Ife District Native Authority does not survive against the Ife Divisional Council.

(b) Williams for Defendants

11th June 1960 continued

10

(4) The Ife District Native Authority at the time it made the Deed of Concession had power to do so under the law.

(5) Neither Sir Adesoji, nor the Ife District Native Authority were at any material time Trustees of the Concession area.

(6) All the parties affected by these proceedings are not before the Court - Ife Divisional Council is still in existence.

Asks that the action be dismissed, with costs.

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(c) AYOOLA FOR PLAINTIFFS IN REPLY

(c) Ayoola for Plaintiffs in Reply

Ayoola in reply says that argument of Counsel for the Defendants does not fit the facts of this particular case. As to whether Mr. Adedapo Aderemi was a member of the Aderawos Timber Company is immaterial.

11th June 1960

(2) It is equally immaterial that the Oni of Ife was not the Sole Native Authority at the time the deed was made. The question is whether he acted on both sides of the contract or not.

30

Ellis v. Kerr 529. The case will apply if it is held that Oni was a trustee. On Exhibit "A" the Oni made it clear that he was a trustee. Refers to page 7 of Exhibit "A" ".....on behalf of the Communal owners of the land". Is the averment in the Deed erroneous? No-one is permitted to alter or add to the contents of any document except in cases of frauds non-est function Duress and Undue Influence. The power exercised was alleged to be under Regulation 40. It is the only Regulation granting power to grant exclusive right or licence to take Forest Produce as to merely controlling and managing the Forest. Regulation 2 defines the word "owner", i.e. those

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Counsels
Addresses

(c) Auoola
for Plaintiffs
in Reply

11th June 1960
continued

who are entitled by Native Law Custom to take timber or produce. This explains why the consent of the Oni of Ife as the Head of that Community was essential to grant of an exclusive right. There is nothing to show that that portion of Exhibit "A" where he purports to sign on behalf of the Community that it was not necessary.

(3) Refers to the Heading of the Legal Notice W.R.L.N. No.501 of 1959. It talks of dissolution of the Ife District Council. The only way of dissolving a Council is to declare the seats vacant. The instrument creating the Council is evidence of its existence. Refers to Section 14 of the Local Government Laws 1957. Composition of members. A composition cannot exist without members. If the members are all out, then the composition comes to an end; and a Committee or Caretaker or Liquidator is appointed to take its place.

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Hague v. Cancer Relief Institute 1939 4
Dominion Law Report 191 - in favour of Modern
Company Law 2nd Edition page 71 Note 58. There can
be no composition without natural members.

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The Defence of the 1st Defendant was filed on behalf of the Caretaker Committee etc. If the Court agrees that 1st Defendants names is not as described on the writ, then the Court can of its own motion amend. The rules of Court allow this in order to do substantial justice. Order 10, Rule 1.

(4) Limitation of Actions - Section 242 of the
Local Government Law 1957 states that action should
be taken 6 months after the act complained of.
But where the act or damage or injury is on a contin-
uous nature the time will be 6 months after the....
.....of such act etc. The fact that a deed which
is void in Law is still in force is a continuous
injury and the course of action exists from day
to day throughout the existence of that Contract.
Halsbury Laws of England 2nd Edition Vol. 20
page 617. Submits that the action is within time.
The Deed does not expire until 1979.

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(5) The Ife Divisional Council cannot only take the benefits of the Exhibit "A" but also its burdens and liabilities which includes the liability of having the deed set aside.

10 (6) There is a difference between "Right" and "Interest". The purpose of the Forestry Ordinance is clear. Native Authority cannot acquire land through Forestry Ordinance but through the Local Government Law which lays down its own procedure for holding of land by Local Governments. The right of District Council or Native Authority is only to manage and control Forest Reserve. The interest of the owners remain, but they are divested of all rights over the land. Hence Regulation 40 says that the owners' consent is essential before granting exclusive right. There is abundant evidence in Exhibit "A" that the Community has an interest in the land.

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Counsels
Addresses

(c) Ayoola
for Plaintiffs
in Reply

11th June 1960
continued

There is no need for the Plaintiffs to prove that his right was violated. As a member of the Community he is entitled to challenge the deed granting the concession. Aberdeen Town Council v. Aberdeen Community. Proof of loss is not essential.

20 (7) It is not disputed that the Ife Divisional Council has the power to grant the Concession but the complaint is as to the maner of the exercise of that power.

(8) All parties are before Court.

Asks Court to give judgment for the Plaintiffs.

30 Williams refers to Exhibit A and says the parties to the deed are two. The communal owners of the land were not parties to the deed. The Oni and other persons signed for and on behalf of the Ife Native Authority. It is necessary for the communal owners of the land to have been mentioned.

Definition - 2. The definition of "Owner". There is no evidence before the Court that any one is entitled to take Timbers by Native Law and Custom.

Adjourned for judgment.

(Sgd.) JOHN A. KESTER

A/J.

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Court of
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No. 9

JUDGMENT

No.9
Judgment
30th June 1960

IN THE HIGH COURT OF JUSTICE
WESTERN REGION OF NIGERIA
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

BEFORE THE HONOURABLE MR. JUSTICE J. A. KESTER, JUDGE
THURSDAY THE 30TH DAY OF JUNE, 1960

Suit No. 1/212/59

B E T W E E N :-

10

BALE ADEDIRE AND 6 OTHERS

Plaintiffs

- and -

- 1. THE CARETAKER COMMITTEE OF
THE IFE DIVISIONAL COUNCIL
- 2. ADERAWOS TIMBER COMPANY
LIMITED

Defendants

J U D G M E N T

The Plaintiffs by their Writ of Summons claim
as follows:-

(1) A declaration that the Deed of "Concession"
dated 6th January, 1954 and regisrered as Instrument
No.16 at page 16 in Volume 54 Register of Deeds,
Lands Registry, Ibadan, purported to have been
entered into by the Ife District Native Authority on
the one part and the 2nd Defendant on the other part
is irregular and contrary to equity and liable to
be set aside;

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(2) An Order to set aside the aforesaid Deed;

(3) Against the 2nd Defendant, and account of all
profits derived pursuant and by virtue of the
"Concession" conferred on them by the aforesaid
Deed, and an Order that the sum found on such
account be paid into Ife Divisional Council
Treasury for public use and benefit;

30

(4) Against the 2nd Defendant, and injunction to
restrain them from further exploiting of the
"Concession" the subject matter of the aforesaid
Deed.

In their Statement of Claim they alleged that:-

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continued

"(1) They are members of the Ife Community, and that this action is brought by virtue of their being members and Taxpayers at Ife.

(2) The forest area the subject matter of the "Concession" in the Deed they are asking the Court to set aside, is the communal property of the Ife Community.

10 (3) The property was held in trust for the community of the Ife District Native Authority, the successor of the rights and duties of which is now the 1st Defendant.

(4) At all dates material Sir Adesoji Aderemi, the Oni of Ife was the trustee of Ife communal lands.

20 (5) At all times material to the said Deed of "Concession" Sir Adesoji Aderemi, the Oni of Ife was a Principal member of the Aderawos Timber Company Limited.

(6) The Aderawo Timber Company Limited is a private company, the membership of which in 1954 was two, Sir Adesoji Aderemi, the Oni of Ife and one Awo, a forestry officer of the Ife District Native Authority, hence the name ADERAWOS Timber Company Limited.

30 (7) In 1954 Sir Adesoji Aderemi, then as the Oni and Council "On behalf of the Ife District Native Authority" granted a concession of the Ife Forest to the Aderawos Timber Company Limited as contained in the Instrument registered as No.16 at page 16 in volume 54 Register of Lands, Ibadan.

(8) Sir Adesoji Aderemi, the Oni of Ife concluded the said Instrument on behalf of each side to the purported contract, purporting to act in a dual capacity.

40 (9) The aforesaid Deed of Concession is in the circumstances unfair, irregular and contrary to equity and liable to be set aside in that the Oni of Ife acted on both sides in a transaction in which he had a personal interest in possible conflict with

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continued

his duty as trustee of communal lands.

(10) The Aderawos Timber Company Limited has since April, 1954 made substantial profits from the said concession and have refused in collaboration with the 1st Defendant to release the concession to the Ife Community despite repeated demands."

The 1st Defendants in their Statement of Defence denied all the allegations contained in the Statement of Claim and in addition pleaded the protection of Section 62 of the Native Authority Ordinance or in the alternative Section 242 of the Local Government Law, 1957. 10

The 2nd Defendants also denied all the allegations in the Statement of Claim. They further averred thus:

(1) The forest area conferred in the instrument described in paragraph 2 of the Statement of Claim was duly constituted a forest reserve under the Forestry Ordinance.

(2) The Plaintiffs have no right in or over the area of land in dispute in this case. 20

(3) The Deed described in paragraph 2, 4 and 7 of the Statement of Claim was duly made in pursuance of powers vested in the Native Authority by law.

At the hearing Exhibits A, B, C, C1 and C2, D, D1-5, E and E1, F, G and H were produced and admitted by consent. Only one witness, the 1st Plaintiff was called at trial. He stated in evidence that he was a descendant of Ogunleye and head of Agbedegbede Compound. He said that he knew the forest which is the subject matter of this case. He is a native of Ile-Ife. He was born and bred in the forest in question. He hunted in the forest and farmed some portion of it before it was made a Forest Reserve. He said that he was not consulted by the Oni of Ife before the concession was granted to the 2nd Defendants to cut timber there. Under cross-examination the witness submitted that some members of the Ogunleye family are still hunting in the Reserve. He denied bringing this action because he contested against the present Oni of Ife for the throne of Ife and lost. He said that 30 40

the Oni took the throne from him.

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continued

After the evidence of the 1st Plaintiff Mr. Ayoola for the Plaintiffs closed their case. Chief Rotimi Williams for the Defendants informed the Court that he was calling no evidence. He closed the case for the Defendants and both counsel addressed the Court.

10 Before considering the legal submissions made by counsel for both sides I would like to consider first the submission by Counsel for the Defendants that the 1st Defendants have been wrongly brought to Court. By W.R.L.N. 251 of 1955 the Ife Divisional Council was set up or established under the Local Government Law 1952. By Section 227(1) of the Law, the Native Authority Ordinance was repealed in Ife as from 15/10/55. The 1952 Local Government Law was repealed by the Local Government Law 1957 with effect from 12th April 1957 (Section 285 refers).
20 By Section 264 of the Local Government Law 1957 all Instruments made under the 1952 Law were treated as if made under the 1957 Law. By an Order made under Section 86(1)(b) of the 1957 Law - W.R.L.N. 501 of 1959 - the seats of the President and members of the Ife Divisional Council were declared vacant and a Committee of Management was appointed in place of the Council to execute its functions. It was submitted on behalf of the Defendants that
30 the Order does not put an end to the life or existence of the Ife Divisional Council and that only a revocation of the Instrument establishing the Council that can put an end to its existence as a corporate body. That Section 8 of the Local Government Law empowers the Governor in Council to revoke the Instrument of a Council. That there is nobody known to the Law as "The Caretaker Committee of the Ife Divisional Council". Counsel for the Defendants also agreed that a misnomer should not ordinarily defeat the Plaintiffs' claim. He
40 said that he had no objection to Plaintiffs deleting the words "The Caretaker Committee of" from the title of the case as given and the 1st Defendants as well as the Statement of Claim. Mr. Ayoola in reply said that he was not asking for an amendment of the description of the 1st Defendants. He did not agree that there is a misnomer. He said that if however the Court holds that there is a misnomer he will ask for an amendment of the description of the 1st Defendants. Counsel for the Defendants said

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that in view of the fact that the counsel for the Plaintiff was not asking for an amendment as to the description of the 1st Defendants, that the wrong person is before the Court. He submitted that the Court cannot make a decision as to what is in the mind of Counsel for the Plaintiffs as to the person he intended to bring to Court, and that since he said that there was no misnomer, it must be taken that he has brought the person he intended to bring to Court, and must bear the consequences. 10
Chief Rotimi Williams submitted that there is no such person in law as "the Caretaker Commmittee of the Ife Divisional Council", and that the Plaintiffs cannot say "we sue A and if A does not exist, then we sue "B". He further submitted that if the Court upholds his submission then the case is out of Court because the Court cannot set aside the Deed when all the parties are not before it. He said the proper party to be brought before the Court is the Ife Divisional Council. Mr. Ayoola 20
in reply said the title to W.R.L.N. 501 of 1959 is "The Ife Divisional Council (Dissolution) Order 1959" and submitted that the intention of the order was to dissolve the Council. He said that if the Court holds that there is a misnomer he would agree to an amendment. I have considered these submissions by Counsel and I agree with the contention of Counsel for the Defendants and hold that the proper defendants should have been the Ife Divisional Council. I do not however agree with 30
the submission of the Defendants' counsel that by refusing to apply for an amendment the Plaintiffs should be taken to have brought the wrong persons they intend to bring and if it turns out that such persons are not in existence, they must bear the consequences. The Plaintiffs no doubt have erroneously described the 1st Defendants as "Caretaker Committee of the Ife Divisional Council." By their Statement of Defence the 1st Defendants have pleaded a section of the 40
Local Government Law and claim protection under the Law. They regard themselves as a Council established under the Local Government Law. In order to settle the dispute between the parties in this case I think it is right to amend the title of the case and the Statement of Claim by substituting "Ife Divisional Council" for the name of the 1st Defendants. The proceedings are hereby amended accordingly.

Plaintiffs' case is that at the time the Deed, In the High
 Exhibit "A" was made, Sir Adesoji Aderemi, the Oni Court of
 of Ife was the Sole Native Authority for Ife, and Justice
 that he was one of the only two members of the _____
 Aderawos Timber Company Limited, 2nd Defendants; No.9
 that the Oni signed the deed Exhibit "A" both as Judgment
 grantor and grantee. Counsel for the Plaintiffs 30th June 1960
 cited the case of Hastings v. Gulliver 1942 1 A.E.R. continued
 page 378 and page 381 and submitted that it is
 authority for the proposition that if Company
 Director in an agreement between two companies, e.g.
 A and B, sign as director of Company "A" and in
 the same agreement signs as director of company
 "B", the agreement will be voidable in equity
 apart from any question of its fairness or un-
 fairness. He further cited the cases of
Ellis v Kerr 1910 KLD Page 529 and page 539, and
Napier v Williams 1911 10h D361 at page 368, and
 said that by the authority of the two cases it
 makes no difference that there weresome other
 persons signing the agreement with the director.
 I have considered the authorities cited, and in my
 opinion they do not support the propositions put
 forward by counsel. Counsel's submissions on
 this point are dismissed.

By their Statement of Claim the Plaintiffs
 aver that the forest area the subject matter of
 the concession is communal property of the Ife
 Community, and that at all dates material Sir
 Adesoji Aderemi the Oni of Ife was the trustee of
 Ife communal lands. The 1st Plaintiff, the only
 witness called by the Plaintiffs, did not give any
 evidence as to whether the "concession" is or was
 ever communal property. However, Mr. Ayoola,
 Counsel for the Plaintiffs, in his address drew the
 attention of the Court to a passage in the Deed,
 Exhibit A, where it is stated:-

"In witness whereof the Oni of Ife and Council
 for and on behalf of the Ife District Native
 Authority and as the traditional Authority on
 behalf of the communal owners....."

Counsel submitted that the Defendants are estopped
 from denying the ownership of the property by the
 Ife Community. The agreement Exhibit "A" is,
 according to the recital, one between the Ife
 District Native Authority and the Aderawos Timber
 Trading Company Limited, and I cannot understand
 why it was not only signed on behalf of the parties,

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but also on behalf of the communal owners. "Who are the communal owners?" Although the Plaintiffs claimed as members of the "Ife Community" there is no evidence before the Court as to what constitutes this community. The identity of the "communal owners" is not clear or certain. Apart from the 1st Plaintiff, there is no evidence about who the other Plaintiffs are. No evidence whatever about their identities. Paragraph 1 of the Statement of Claim was denied by the Defendants. In the circumstances, therefore, I am unable to hold that the words "communal owners" in Exhibit "A" refer to the unidentified class of persons described as "Ife Community" which the Plaintiffs claim they belong and by which right they have brought this action". I do not agree that any estoppel arises.

10

The next question to decide is whether the Oni is the Trustee of the concession the subject matter of this action and whether his interest and the Trust conflicted. In view of the provisions of Section 27 of the Forestry Ordinance and in the absence of evidence by the Plaintiffs to show who the owners of the forest were before it was constituted into a Reserve, I am unable to hold that the Oni of Ife was a trustee in respect of the Forest Reserve or that the Plaintiffs are beneficiaries.

20

The submission that the Oni of Ife was the Sole Native Authority at the material time is in my view not correct. The Schedule to W.R.Public Notice No.6 of 1952 shows that members of the Ife District Council constitute the Ife District Native Authority.

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Chief Rotimi Williams for the Defendants submitted that no action can lie against the Council in view of the wording of Section 282B of the Local Government Law 1957. His argument is that this Section reproduced Section 222 of the 1952 Local Government Law, and that an order under the repealed law would have kept all rights of action against a Native Authority alive and enforceable against a Local Government Council which replaced it; but by the omission of Subsection (2) of Section 222 of the 1952 Law from the provisions of Section 282B of the 1957 Law it follows that rights of action against Native Authorities are no longer kept alive and enforceable against the Local Councils. The argument sounds convincing

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and if I agree with the submission then the present action cannot succeed since the right of action against the Ife District Native Authority for executing Exhibit "A" will not be enforceable against the 1st Defendants. However, I am of the view, and I hold that the Ife Divisional Council are successors of the Ife District Native Authority and that they are liable for the acts and defaults of the Ife District Native Authority in respect of the Ife Forest Reserve as affecting Exhibit "A". In course of the argument by Counsel my attention was directed to an order made by the Minister under Section 282B of the Local Government Law of 1957 - W.R.L.N.484 of 1958 refers. I agree with Chief Rotimi Williams that the reference to "Ife Divisional Native Authority" in W.R.L.N.484 of 1958 was meant to be "Ife District Native Authority". In Craies on Statute Law 5th Edition page 494 it is stated:-

In the High
Court of
Justice

No.9

Judgment

30th June 1960
continued

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"...in Chancellor of Oxford v. Bishop of Coventry it was resolved that when the description of a corporation in an Act of Parliament is such that the true corporation intended is apparent though the name of the corporation is not precisely followed, yet the act of Parliament shall take effect."

30

On behalf of the 1st Defendants, it was submitted by Counsel that the action is statute barred. Mr. Ayoola for the Plaintiffs replied and said that so long as the Deed of Concession Exhibit "A" is still in force time does not begin to run. Chief Rotimi Williams said that time begins to run from the moment there is a cause of action. According to Lord Esher M.R. in Read v. Brown (1888) 22 QBD 128, a cause of action accrues as soon as every fact which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to judgment has happened or occurred. In the present case a cause of action accrued against the Native Authority and the 2nd Defendants from the time the Deed Exhibit "A" was executed in 1954. The action was not brought until 1959. I hold that Plaintiffs' action is statute barred.

40

Another point raised by Counsel for the Defendants is about the Deed of Concession Exhibit "A" being validly made in accordance with the Forestry Ordinance Cap. 75/L/N and the Regulations made

In the High Court of Justice
No.9
Judgment
30th June 1960
continued

thereunder. The deed Exhibit "A" was made in respect of the area within the Ife Native Authority Forest Reserve. The Reserve was constituted under Section 22 of the Forestry Ordinance Cap. 75 (Order No.1941 as amended by W.R.L.N.2 of 1954 - Exhibits D - E). The deed was empowered to be made in exercise of the powers conferred upon the Ife District Native Authority by Rule 40 of the Forestry (litten Powers Native Authorites) Rules 1943 as amended by Native Authority Public Notice No.58 of 1948 page 482 of Laws of Nigeria 1948/49. Rule 40 reads:-

10

"40. The owners of protected areas, with the approval of the Governor, may grant licences conferring on the holders the exclusive right to the timber within an area of or areas defined in such licence."

To decide if the deed Exhibit "A" was validly made under the Rule it must be shown that the trees in a reserve are "protected trees" and that the Native Authority is the owner of such trees. I must confess that the Forestry Ordinance and the Regulations made thereunder are not clear or helpful on the point. But taking Rule 40 together with Section 27 of the Forestry Ordinance which extinguished every right in or over land within the reserve save such rights as are specifically excepted in the Order constituting the reserve, and Section 33 of the Ordinance which vests a Native Authority with the protection, control and management of a Native Authority Forest Reserve, the Ife District Native Authority can be held to be the "owners of protected trees"; and that by the power to control and manage the Reserve they are expected to grant exclusive licence to exploit the forest for timber. In my opinion the deed Exhibit "A" was and remains valid.

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In conclusion I find that the Plaintiffs have failed to prove their right to bring this action, and that they have failed also to prove that the concession area, the subject matter of Exhibit "A" belong or ever belonged to the Ife Community. In addition I hold that Plaintiffs' claim is statute barred, and that the Ife District Native Authority had the power to grant to the 2nd Defendants exclusive licence to exploit the

40

Reserve for timber and that the deed Exhibit "A" was validly made. I dismiss Plaintiffs' claim and enter judgment for the Defendants.

(Sgd.) J. A. KESTER

J u d g e.

No. 10

COURT NOTES ON ORDER

BEFORE THE HONOURABLE MR. JUSTICE J. A. KESTER
JUDGE

THURSDAY THE 30TH DAY OF JUNE, 1960.

Suit No. 1/212/59

Plaintiffs absent.

Defendants absent.

Craig for Ayoola for Plaintiffs.

Aderemi with Chief Rotimi Williams Q.C. for Defendants.

Judgment read. Plaintiff claim dismissed.
Judgment entered for the Defendants,

Aderemi for the Defendants asks for 500 gns. costs. Craig says that Counsel (for Defendants) has not told the Court what his expenses are. Costs cannot be permitted. Leave the question entirely to the Court.

Aderemi says a Senior Counsel, a Q.C. and a junior Counsel were engaged by the Defendants.

In addition the Counsel (1st Defendants) were put to a lot of expenses.

250 gns. costs awarded the Defendants.

(Sgd.) JOHN A. KESTER

A/J

In the High Court of Justice

No.9

Judgment

30th June 1960
continued

No.10

Court Notes
on Order

30th June 1960

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In the Federal
Supreme Court

IN THE FEDERAL SUPREME COURT OF NIGERIA
NOTICE OF APPEAL

SUIT NO. 1/212/59.

No.11

Notice of
Grounds of
Appeal

28th September
1960

B E T W E E N :-

BALE ADEDIRE & 6 OTHERS

Plaintiffs

- and -

- 1. THE CARETAKER COMMITTEE OF)
THE IFE DIVISIONAL COUNCIL)
- 2. ADERAWGS TIMBER COMPANY LIMITED)

TAKE NOTICE that the Plaintiffs being dis-
satisfied with the decision contained in the Judg-
ment of Ibadan High Court sitting at Ibadan dated
the 30th day of June 1960 doth hereby appeal to the
Federal Supreme Court of Nigeria upon the Ground
set out in paragraph 2 below and will at the
hearing of the appeal seek the relief set out in
paragraph 3.

10

And the Appellants further state that the
names and addresses of the persons directly
affected by the appeal are those set out in
paragraph 4.

20

2. Grounds of Appeal:-

(1) The learned trial judge erred in law and
in the facts in holding that the agreement the
subject matter of this suit is not voidable in
Equity.

(2) The learned trial judge erred in law in
holding that an estoppel does not arise to estop
the defendants from denying that the land the
subject matter of the agreement was not the communal
property of the Ife Community in face of the
evidence and Exhibit A in particular.

30

(3) The learned trial judge erred in law in
holding that the Oni of Ife was not in a position
of trust in respect of the grant of the concession
when such a relationship was established by Deed
Exhibit A.

(4) The trial judge erred in law in considering
the defence raised by the defendants that the area
of the concession was a Forest Reserve when the

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defendants do not lay any claim in right to the said area by virtue of the said area being a Forest Reserve.

In the Federal Supreme Court

No.11

(5) The learned trial judge erred in law in holding that the action is Statute barred when the applicability of the Statute of Limitations was not established by the defendants.

Notice of Grounds of Appeal

28th December 1960

10

(6) The learned trial judge erred in law in holding the Deed Exhibit "A" was validly made when the defendants did not establish the power of the 1st defendant to make the concession under Rule 40 of the Forestry Rules of 1943 referred to by the Judge in his judgment.

(7) The judgment is against the weight of evidence.

3. Relief sought from the Federal Supreme Court of Nigeria: To set aside the decision of the High Court, Ibadan.

4. Persons directly affected by the Appeal. (Not reproduced).

20

Dated at Ibadan this 28th day of September 1960.

His R.T.I.
BALE ADEDIRE.

(Sgd.) Samuel Adetunji }
Awe Adeniji }
Emman Adeyemo }
E.T. Adewoyon }
B.F. Shobaloji }
S. Giwa }

APPELLANTS.

No. 12

No.12

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ARGUMENTS ON APPEAL

Arguments on Appeal

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS
ON THURSDAY, THE 15TH DAY OF NOVEMBER, 1962

15th November 1962

BEFORE THEIR LORDSHIPS

SIR ADETOKUMBO ADEMOLA, KT.
JOHN IDOWU CONRAD TAYLOR
SIR VANE ROBERT BAIRAMIAN, KT

CHIEF JUSTICE OF THE FEDERATION
FEDERAL JUSTICE
FEDERAL JUSTICE

In the Federal
Supreme Court

FSC. 395/1961

No.12

BALE ADEDIRE & 6 OTHERS

Appellants

Arguments on
Appeal

Vs.

15th November
1962

1. THE CARETAKER COMMITTEE OF)
THE IFE DIVISIONAL COUNCIL)
2. ADERAWOS TIMBER COMPANY)

Respondents

continued

Appeal: Judgment of Kester J. dated 30/6/60.

Kayode, Q.C. (Duduyemi with him) for Appellants.
Chief Rotimi Williams (Nzegwu with him) for
Respondents.

10

Kayode opens:

Summons at p.2 of the Record.

1st defendant as Council, plaintiffs alleged,
hold the land in question as trustees of the people
within their jurisdiction. Paragraph 4 of State-
ment of Claim at p.5 alleged that Sir Adesoji
Aderemi, the Oni of Ife, as a member of the Council
and as a traditional authority is also a trustee of
the land.

Plaintiffs further averred that the said
Adesoji Aderemi being a trustee, was a shareholder
or partner in the Company, 2nd defendant - see
paragraphs 5, 6 and 7 of the Statement of Claim,
p.5. Also in paragraph 8, the Oni executed the
agreement on both sides, as grantor and also as
grantee.

20

Defence at pages 7 and 8. 1st defendant
claimed his defence under State of Limitations:
p.7 paragraph 2. At p.8 paragraphs 2, 3 and 4 the
defence of 2nd defendant.

30

Deed of Concession (Exhibit "A") at p.38 of
the Record:

Lines 1 - 4 are the most important.

Also at p.44, the signatories: lines 1 - 4.

Articles of Association and Memorandum of
Association were both tendered - Exhibits C, C1 and
C2: All show Aderemi the Oni of Ife as Director of

the Company.

In the Federal
Supreme Court

Also the Certificate of Incorporation:
Particulars of the Directors of the Company. All
show that Aderemi the Oni of Ife was the
Principal Shareholder of the 2nd Defendants -
See Exhibits F and H respectively.

No.12

Arguments on
Appeal

15th November
1962
continued

Also Exhibit G shows the partners in the
Company as Aderemi the Oni of Ife and one
Awoshiyan.

10 See page 38 lines 10 - : Shows powers under
which the land was leased to the Company. - See
Vol. 8 Laws of Nigeria 1948 Cap.75 paragraph 40 of
the Laws. This is recited at p.35 of the Record
of Appeal - from line 10. Judgment at pages 27-36.
Refers particularly to page 31 as from line 45, which
is the plaintiff's case: Read up to p.32 line 22.
Refers to p.33 from line 16: See p.32 line 40 et seq.
up to p.33 line 7: Page 33 from line 5 onwards.

20 On the Statute of Limitations - see page 34
lines 25 - 31-42.

Forestry Ordinance and Forest Reserve:

See page 34 lines 43 - 47: page 35 lines
17-36 emphasise on the words "Can be held at line 32.

Refers to Order 80 of 1941 at p. B269 Laws of
Nigeria constituting the Ife Forest Reserve (Exhibit
E) and second schedule to Western Region Law No.2
of 1954 amending Exhibit E which came into force
after the deed was made.

30 N.B. The amendment No.2 of 1954 was published after
the deed was made.

The amendment will therefore not affect the
deed.

Kayode drops this

Refers to 1941 Legislation, Order No.80 of
1941 page B 270 Second Schedule.

Refers specifically to the name Ogunleye on
that page.

Also page B.271 refers to the name Ogunleye.

In the Federal
Supreme Court

No.12

Arguments on
Appeal

15th November
1962

continued

Submit no doubt that the name Ogunleye is there.

This reference to Ogunleye is important as it is 1st plaintiff who is called by that name - see page 11 line 28. He is therefore entitled as a member of the Community to sue.

Grounds 1, 2 & 3 of appeal argued together.

If Native Authority acts under the Forestry Ordinance, it is still acting as Native Authority. Co-trustees making profits out of object of the trust. The Native Authority still holds the land for the whole community.

10

Refers to page 38, line 2 and p.44 lines 1 - 4. Equity will not allow a trustee to benefit from the trust.

Aberdeen Town Council v. Aberdeen University (1877) 2 L.R. Appeal cases 544, also at p.548; p.553 (middle page).

No limitation of time will be allowed whatever; can be set aside at any time.

Regal (Hastings) Ltd. vs. Gulliver (1942) 1 All E.R. 378. Editorial note at p.379; p.381 E. to p.382 (regarding Companies).

20

In Re: Thompson 1930, 1 Ch. 203 at p.214.

Ground 5

Statute of Limitations: Section 62 of the Native Authority Ordinance. The following submissions are made:-

(1) Onus on the man who is asserting the Statute. Defendant must show that the deed has come to the knowledge of the Plaintiffs.

No evidence was led by the Plaintiff in this case.

Section 62(1) of the Native Authority 1948 Ordinance Cap. 140 refers.

30

(2) During continuation of the Legal Inquiry you can bring the action Continuance of Inquiry means continuance of Legal Inquiry. See Obiafuna v. Okoye (461) 1 All N.L.R.358 at

p.360. Since the whole matter the concession continues, any member of the community may bring action. In the Federal Supreme Court

No.12

- (3) The trustees cannot take advantage of this act: the Oni was acting as trustee not as a native authority: cannot hide under the native authority cloak.

Arguments on Appeal

15th November 1962

continued

- 10 Clarkston v. Mordern Foundries Ltd. (1958) 1 All E.R. 33 Statute of Limitation - Inspector General of Police vs. Olatunji: 21 N.L.R.52 - last paragraph at p.52. In the present case, the Oni of Ife was acting for his own benefit, one of the parties was acting for his own benefit.

Refers to the Limitation Act, 1939 and the case Baker v. Medway Building Supplies (1958) 2 All E.R.535 (E) Section 19(1)(b) of the Act.

When the property is still with Trustee, you do not have to rely on fraud, you can pursue the property regardless of any limitation of time.

- 20 When one member of defendants No.1 commit a breach of trust in his favour, I submit that all other members of his Council are affected because they are parties to it. Duty that 1st defendant purports to exercise must be a public duty for the Statute of Limitation to apply. Must be that the defendants are obliged by law to perform that duty.

Bradford Corporation v. Myers (1916) 1 A.C. 242 at p.247 (paragraph 3).

- 30 Griffiths v. Smith (1941) A.C. 170 at p.185 Swain vs. Southern Railway (1938) 1 Q.B.D.77 at page 84 (2nd paragraph) Cox v. Turguih Corporation (1938) 4 All E.R. 16.

Grounds 4 and 6

Rule 40 of No.48 of 1948 states that where the owners of protected trees see p.35 of the Record. It was said that was in exercise of this Rule that the purported act was done. My reply is that it does not matter under which rule the action sprung from.

In the Federal
Supreme Court

No.12

Arguments on
Appeal

15th November
1962

continued

The Council was acting ultra vires. Look at the Forestry Ordinance itself: Cap.75 Sec.78 Sec.27. 2nd defendant purported to have acted under Sec.22 of the Forestry Ordinance. Read this with Sec.27.

Definition at p.117 of Vol. VIII: "Owners" Interpretation Section: Read this with Rule 40: Exclusive right of concession. Read Sec.33 of the Forestry Ordinance and the case. Section 27 and 78.

Permit to take timber: licence for each tree felled. 10

Adjourned till 29/11/62.

(Sgd.) A. ADE ADEMOLA

C.J.F.

Arguments on
Appeal (contd.)

29th November
1962

ON THURSDAY, THE 29TH DAY OF NOVEMBER, 1962

Same appearances.

Chief Rotimi Williams arguing for Respondents

Taking ground 5 first

Refers to Section 62 of the Native Authority Ordinance: Cap. 140 Vol. 4 of the Law. First part: Submit it does not apply to cases where an act is said to be done in execution of a public duty or exercise of a public authority. 20

Native Authority acting under its power under an Ordinance is enough.

Refers to Exhibit A; shows it is the Native Authority which is a party to the agreement.

Refers to Griffiths & Anor. v. Smith 1941 A.C. 170 and at p.185 (Lord Maugham).

Buyton and Roby Gas Co. v. Liverpool Corporation (1946) 1 Q.B. 146 at pages 156, 157 and 158. 30

Grant must be looked upon as exercise of a Statutory power: must be done within 6 months.

All cases referred to by Appellant relate to tortuous acts hence difficult to apply.

In the Federal
Supreme Court

In Western Region Legal Notice 484 of 1958: the agreement Exhibit A was referred to (at page B.759: W.R. Law 1958).

No.12

Arguments on
Appeal

29th November
1962

continued

Ground 6

10

Whether the Native Authority had power to make the grant? Answer is in the Forestry Ordinance - see Vol. 3 of 1948 Evidence of the laws.

Two types of Forest Reserve under the Ordinance namely, Government Forest Reserve and Native Authority Forest Reserve.

No authority vesting the forest or trees in the forest or anybody. Management and control of forest under the Native Authority are left in the hands of the Native Authority.

20

Native Authority Forest Reserve created by the Native Authority itself and they are assumed to be the owners.

Provisions extinguishing any other interest of the Community etc. in the Ordinance.

Forestry Ordinance Cap. 75.

Section 5113 refers to Government Forest Reserve, Section 22 reserve certain Forest Reserve to Native Authority. Ordinance may refer to land outside Reserve, Section 23 describes procedure to be carried out. Section 27 important - refer to 3(3).

30

Section 36 bears out that there is a communal Forest Reserve as indicated by section 34.

Refers to Regulation 40 of Forestry Regulations Vol.8 of the Laws 1948: See definition of "Owner" at page 117 of the Regulations.

This will include communal owner whose rights are reserved.

Refers to the Ord. (Cap.75) where protected trees are defined. Validity of agreement Exhibit A attacked. But see under Regulation 40. Licence can be given to take trees but not ~~mind~~ trees unless they have special licence for it.

In the Federal
Supreme Court

No.12

Arguments on
Appeal

29th November
1962

continued

All trees in the Reserve are protected trees, but you may have permission to fell ~~protected~~ trees.

"Protection Management and Control" are all any owner can have and the Native Authority have it.

See definition of "protected forest" at p.184 of the Forestry Ordinance Cap. 75.

Ground 1, 2 and 3

There were 2 parties to the agreement - the Ife Native Authority, Aderwo^s Trading Co. and the Oni. The operative part says "The Native Authority" 10 hereby grant - see Deed Exhibit A. At p.44. The testimonium was executed by the Oni of Ife.

Testimonium Clause does not affect the Habendum Clause of a deed. Exhibit A: All parties to the Deed must be brought to the Court.

Blair v. Assets Co. (1896) App. Cases 409 and see p.432.

The Oni purports to have traditional authority over his chiefs or his people.

- See paragraph 1 of the Writ. 20
Also paragraphs 3 and 4 of the Statement of Claim.
Contradictions between paragraphs 5 and 6.

No evidence by that Ife Community has any right in or interest over the land.

Not known who these Ife community are: No Evidence.

Page 132 line 33.

Claim on the summons: that deed is voidable in equity and should be set aside.

This means that the deed is valid but on some grounds of equity. It should be set aside. 30

No question of setting aside if no statutory power vested in the Native Authority to make the grant.

Kayode Replies

Any member of the Ife Community has a right of action over Ife communal land. The Oni is the head of Ife Community.

The tenure of the deed shows this completely.

Refers to paragraph 1 of the Statement of Claim: also page 11 of the record, lines 28 - 35.

In the Federal
Supreme Court

No.12

Arguments on
Appeal

29th November
1962

continued

10

Refers to page 10 line 25. See 1941 legislation, page B269 Section 2: also B220, 2nd Schedule.

Did not join the Oni of Ife: not necessary: he is part and parcel of the Native Authority: basis of the Claim. All parties were before the Court. See Signature on Exhibit A - see page 7 of Exhibit A.

Forestry Ordinance refers to land only in the Reserve not land outside. Must be land declared as Reserve.

Ground 5

20

Griffith v. Smith (Supra) makes it clear that the act to be protected must be something done for the public benefit - see p.177 - 178.

Also Section 62 will not apply as it is a breach of trust: it will not be acting in execution of duty or for the public benefit.

Continuity of legal damage: until the determination of knowledge, right continues.

How will the Community know that the Oni was a member of the Company?

30

Urged that appeal should be allowed.

Judgment Reserved.

(Sgd.) A. ADE ADEMOLA

C.J.F.

In the Federal
Supreme Court

No.13

JUDGMENT

No.13

Judgment

28th January
1963

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS
MONDAY THE 28TH DAY OF JANUARY, 1963

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA	CHIEF JUSTICE OF THE FEDERATION	
JOHN IDOWU CONRAD TAYLOR	FEDERAL JUSTICE	
SIR VANE BAIRAMAIN	FEDERAL JUSTICE	10

F.S.C. 395/1961

B E T W E E N:-

BALE ADEDIRE & 6 OTHERS

Appellants

- and -

- 1. THE CARETAKER COMMITTEE OF)
THE IFE DIVISIONAL COUNCIL)
- 2. THE ADERAWOS TIMBER COMPANY)

Respondents

J U D G M E N T

TAYLOR, F.J.:

This is an appeal from the Judgment of Kester J., of the High Court of Ibadan, dismissing the plaintiffs' claim which reads as follows:-

20

" The plaintiffs, members of the Ife Community, jointly and severally claim against the defendants jointly and severally:-

- (i) a declaration that the Deed of "Concession" dated 6th January, 1954 and registered as Instrument No.16 at page 16 in Volume 54, Register of Deeds, Lands Registry, Ibadan, purported to have been entered into by the Ife District Native Authority on the one part AND the 2nd Defendant on the other part is irregular and contrary to equity and liable to be set aside.

30

(ii) An order to set aside the aforesaid Deed.

(iii) Against the 2nd Defendant, an account of

all profits derived pursuant and by virtue of the "Concession" conferred on them by the aforesaid Deed, and an order that the sum found on such account be paid into Ife Divisional Council Treasury for public use and benefit.

In the Federal
Supreme Court

No.13

Judgment

28th January

1963

continued

- (iv) Against the 2nd defendant, an injunction to restrain them from further exploiting of the "Concession", the subject matter of the aforesaid Deed.

10

The main ground on which the plaintiffs seek the declaration set out above is contained in paragraph 8 of the Statement of Claim which states that:-

8. "Sir Adesoji Aderemi, the Oni of Ife concluded the said instrument on behalf of each side to the purported contract purporting to act in a dual capacity".

This is followed by paragraph 9 in which it is averred that :-

20

9. "The aforesaid Deed of Concession is in the circumstances unfair, irregular and contrary to equity and liable to be set aside in that the Oni of Ife acted on both sides in a transaction in which he had a personal interest in possible conflict with his duty as trustee of communal lands."

The case for the plaintiffs, as can be gathered from the pleadings, is that they are members of the Ife Community and that a lease of certain forest-area in Ife which was the communal property of the Ife Community, measuring some 53 square miles, was granted by the Ife District Native Authority to Aderawos Timber Trading Company Limited for a term of 25 years, subject to the conditions and stipulations contained in the Deed, and marked exhibit "A" in these proceedings. The plaintiffs further say, and I would here quote paragraphs 3 to 5 of the Statement of Claim, that :-

30

3. "The aforesaid property was held in trust for the said Community by the Ife District Native Authority, the successor of the rights and duties of which is now the 1st defendant.

40

In the Federal
Supreme Court

No.13

Judgment

28th January

1963

continued

4. "At all times material to the Deed of "Concession" registered as No.16 at page 16 in Volume 54 Register of Deeds, Land Registry, Ibadan, Sir Adesoji Aderemi, the Oni of Ife was the trustee of Ife Communal Lands.

5. "At all times material to the aforesaid Deed of "Concession", Sir Adesoji Aderemi, the Oni of Ife was a Principal member of the Aderawos Timber Company Limited." 10

In their defence, both defendants made a general traverse of all the allegations contained in the Statement of Claim and the 1st Defendant goes on to set up the defence that the plaintiffs' claim to relief is barred or extinguished by Section 62 of the Native Authority Ordinance Cap. 140 Laws of Nigeria and/or Section 242 of the Local Government Law 1957 which contains identical provisions. The 2nd Defendant Company aver in paragraphs 2 to 4 of the Statement of Defence that:- 20

2. "The second defendants aver that the forest area comprised in the instrument described in paragraph 2 of the Statement of claim was duly constituted a forest reserve under the Forestry Ordinance.

3. "With further reference to paragraphs 2 and 3 of the Statement of Claim the defendants aver that the plaintiffs have no right in or over the area of land in dispute in this case. 30

4. "The second defendants aver that the Deed described in paragraphs 2, 4 and 7 of the Statement of Claim was duly made in pursuance of powers vested in the Native Authority by law.

From the pleadings the issues raised were these:-

(1) Have the plaintiffs a locus standi? Have they any interest in the property in dispute which will entitle them to bring this action?

(2) If they have a right of action, did the Oni of Ife act in a dual capacity both as grantor and grantee or as one of the grantors and one of the grantees? 40

- | | | |
|--------|---|--|
| (3) | Is the transaction one that a Court of Equity will set aside as being contrary to well established principles or rules governing dealings between parties to a contract or persons placed in a fiduciary or quasi-fiduciary position. | In the Federal
Supreme Court
<hr style="width: 10%; margin: 0 auto;"/>
No.13
Judgment
28th January
1963
continued |
| (4) | Is the action barred by virtue of Section 62 of the Native Authority Ordinance Cap.140 Laws of Nigeria? | |
| 10 (5) | Was the Deed of Concession made in pursuance of power vested in the 1st Defendant? | |

The appellants have filed seven grounds of appeal with their notice of appeal; and these grounds, though couched in different forms, deal with the issues I have set out above. I deal with them in the order in which I have set them out.

On the first, the only witness who gave evidence at the hearing was the 1st appellant, and there was no evidence adduced by the respondents
20 controverting the facts deposed by this witness.

He said inter alia that:-

"I am Adedire Ogunleye. I am also the Bale (Head) of Adedire Agbedegbede Compound, Ile-Ife. I was formerly an elephant hunter. I was a member of the Hunters Guild at Ile-Ife. I know the forest which is the subject matter of this case. I am a native of Ile-Ife. I am a tax payer at Ile-Ife. I was born and bred in that forest. I hunted and farmed some
30 portions of the forest. This was before it was made a forest Reserve."

And under cross-examination he said that:-

"I am the Head of the Ogunleye family. Some members of the Ogunleye family still farm in part of the reserve. Some members of the Ogunleye family are still hunting in this part of the reserve."

In addition to this evidence which as I have
40 said is unrebutted, Mr. Kayode for the appellants drew our attention to the 1941 Laws of Nigeria, the Forestry Ordinance No.38/37 dealing with the Ife

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continued

Native Authority Forest Reserve. In the second Schedule at page B270 under the subhead "Rights to Reside" appear the following provisions :-

"The holders of farming rights have the right to reside within their respective farm enclosures as described in this Schedule. The following have the right to reside temporarily for the purpose of the enjoyment of their hunting and fishing rights in the following camps respectively:- (There is no right to grow crops around those camps which are not covered by farming rights.)" Ogunleye and those of his successors, who are members of the hunters guild of Ile Ife, and recognised by the heads of that guild as successors to the camps reserved."

Finally at page B272 certain farming rights in respect of certain areas are also reserved to the Ogunleye family.

Chief Williams has urged that the plaintiffs were unable to show the identity of the Community they represent; that there was no evidence that the Community owned the forest, and that the evidence of P.W.I. was confined mainly to the Ogunleye family, and that even then he is not shown as claiming on behalf of the family. Mr. Kayode in his reply said that the plaintiffs were not suing on behalf of the Community and as far as that point is concerned is content to put his case no further than that the 1st Plaintiff was a member of the Hunters' Guild and head of Ogunleye family has both hunting and "farming rights" in the Ife Native Forest Reserve.

It was further argued by Chief Williams that when the Native Authority takes over the management and control of a forest reserve, it in fact becomes the owner of such reserve, with the result that the plaintiffs have no rights over the area so declared a reserve. Our attention was drawn to various sections and definitions of words, both in the Forestry Ordinance No.38/37, and Cap. 75 of Volume 3 of the 1948 Laws of Nigeria. I do not intend in this judgment to embark upon a discussion of the rights of the Community as a result of these Ordinances, for, as Mr. Kayode has said, he has not brought this action, the

subject matter of this appeal, for and on behalf of the Ife Community. We are here concerned with the rights of the seven individual Plaintiffs/Appellants. As I have said, only the first appellant gave evidence and on his own showing, coupled with the reservation of certain rights to his family of farming, and of hunting rights to a guild of which he is a member, it is beyond doubt that he has certain rights over portions of the conceded area, both as head and as member of the Ogunleye family. In this case on appeal, the 1st appellant as the head of the Ogunleye family is the person in whom by established Native Law and Custom, is vested the management and control of family property. Had exhibit "A" dealt only with rights of cutting timber, the argument might be put forward that the plaintiffs' rights of hunting, fishing and farming would, in no way be affected by the felling of logs, but Clause 1b gives the 2nd defendants the following additional rights over the whole area:-

In the Federal
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continued

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"to make such roads, railways and bridges, and to erect such buildings as are necessary within the Concession Area for the felling conversion and extraction of all such logs, timber and firewood."

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In my view, the 1st appellant has in his own right shown that he has an interest in portions of the conceded area, and that the 2nd defendants have been granted rights of felling timber, making roads, railways, bridges, and erecting buildings where required over the whole area conceded.

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I now pass on to the second issue. At the hearing of the Suit, Exhibit "B" the register of members of the 2nd defendant company was put in by consent. Folio 4 and 5 show the only two members as being Sir Adesoji Aderemi - Oni of Ife and one Lasisi S.A. Awoshiyan. The Articles of Association, Exhibit "C", together with the other exhibits tendered at the hearing, i.e. T4, D4 and D5, make it abundantly clear that Sir Adesoji Aderemi holds the largest share in this Company and that in 1957 he became a Director on the cessation of one Moronfolu Adedapo Aderemi of the Afin Ife from the directorship of the Company. In the Agreement Exhibit "A" the Testimonium reads thus:-

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continued

"In Witness whereof the Oni of Ife and Council
for and on behalf of the Ife District Native
Authority"

Sir Adesoji Aderemi executed this Deed
together with four others for the Oni of Ife and
Council. There can therefore be no doubt, and in
fact Chief Williams did not seek to argue to the
contrary that the Oni of Ife did execute this Deed
in a dual capacity being one of the grantors and
at the same time the major shareholder of the
grantee Company. Both the first and second
issues must therefore be resolved in favour of
the appellants.

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I now come to the third point as to the
effect of such a transation in equity. Mr.
Kayode has referred us to the case of Regal v.
Gulliver 1942 1 A.E.R. p.378 in which Lord Greene,
M.R. puts the duties and liabilities of persons
occupying a fiduciary position as follows:-

"As to the duties and liabilities of those
occupying such a fiduciary position, a number
of cases were cited to us which were not
brought to the attention of the trial Judge.
In my view, the repondents were in a fiduciary
position and their liability to account does
not depend upon proof of mala fides. The
general rule of equity is that no one who has
duties of a fiduciary nature to perform is
allowed to enter into engagements in which he
has or can have a personal interest conflict-
ing with the interests of those whom he is
bound to protect. If he holds any property
so acquired as trustee, he is bound to account
for it to his cestui que trust."

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In the case of Thomson in re. Thomson v. Allen 1930
1 Ch. 203 and 214 Clauson J. says:-

"In order to find the priniple I have to
apply I turn to the Judgment of Cranworth, L.C.
In the House of Lords in the case of Aberdeen
Ry. Co. v. Blaikie Brothers.(1). This case
dealt with a fiduciary relation which arose
from the fact that the person concerned in
the case was the director of a corporate body.
"A corporate body", says the Lord Chancellor,
"can only act by agents, and it is of course
the duty of those agents so to act as best to

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promote the interests of the corporation whose In the Federal
 affairs they are conducting. Such agents have Supreme Court
 duties to discharge of a fiduciary nature
 towards their principal. And it is a rule of No.13
 universal application, that no one, having such Judgment
 duties to discharge, shall be allowed to 28th January
 enter into engagement in which he has, or can 1963
 have, a personal interest conflicting, or continued
 which possibly may conflict, with the interests
 of those whom he is bound to protect. So
 strictly is this principle adhered to, that
 no question is allowed to be raised as to the
 fairness or unfairness of a contract so
 entered into." And further:

"The inability to contract depends not on the
 subject matter of the agreement, but on the
 fiduciary character of the contracting party,
 and I cannot entertain a doubt of its being
 applicable to the case of a party who is
 acting as manager of a mercantile or trading
 business for the benefit of others, no less
 than to that of an agent or trustee employed
 in selling or letting land."

In this case on appeal before us the evidence,
 unchallenged is abundant that the Oni of Ife was
 the major shareholder, and is the Chairman of the
 Board of Directors of the 2nd defendant Company
 who are the grantees. It has further been
 established by Exhibit "A" that the Oni of Ife and
 four others for and on behalf of the Ife District
 Native Authority signed in the capacity of grantors.
 The grantors are, as a result of Section 33(1) of
 the Forestry Ordinance Cap.75 Vol.3 of the 1948 Laws
 of Nigeria, empowered with full rights of control
 and management of the Native Authority Forest
 Reserve. While the rights of individuals in the
 Native Authority Forest Reserve are extinguished,
 certain rights are by Section 27 preserved. The
 Section reads thus:-

"Every right in or over land within an area
 constituted a Native Authority Forest Reserve
 under Section 22, other than the rights set
 forth in the order constituting such reserve,
 shall be extinguished upon the coming into
 operation of the order, save as provided in
 Section 23."

I have pointed out in an earlier part of this

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1963

continued

Judgment the rights possessed by the 1st appellant and the Ogunleye family in certain parts of this reserve. It therefore stands to reason that in the management and control of the whole of the reserved area, the Oni of Ife and Council must exercise their rights or powers in a way that is not inconsistent with or detrimental to the rights and interests reserved in favour of those persons referred to in the 2nd Schedule to the Forestry Ordinance of 1937, and one of whom is the 1st appellant. In my view, the position of the Oni of Ife and Council vis-a-vis the 1st appellant is covered by the two cases to which I have made references; and equity will not allow him to put himself in a position in which his interests as the major shareholder of the 2nd respondent Company, will be or may be in possible conflict with the duties imposed on him and his Council, as already indicated. He is placed in a quasi-fiduciary position as the Oni of Ife in the Ife District Native Authority which executed the Deed Exhibit "A" through the Oni of Ife and Council.

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The fourth issue is whether the claims of the 1st appellant is barred by virtue of Section 62(1) of the Native Authority Ordinance Cap.140 Vol. 4 of the 1948 Laws of Nigeria which provides that :-

"When any suit is commenced against any Native Authority for any act done in pursuance, or execution, or intended execution of any Ordinance, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of any such Ordinance, duty or authority such suit shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or in a case of a continuance of damage or injury, within six months next the ceasing thereof."

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There is a proviso to this Section, but it is not relevant for the purposes of this appeal. Chief Williams Q.C. for the respondent argued that the granting of the concession was an act done in pursuance or execution of an Ordinance and that as such any Suit in respect thereof must be brought within six months after the 6th January

1954. Mr. Kayode, Q.C. for the appellants contended that the section did not apply for the following three reasons:-

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- (i) That the duty imposed on the Native Authority was not one that it was obliged to carry out; Judgment
28th January
1963
continued
- (ii) That an act in breach of a trust cannot be one done in the execution of a duty; and
- (iii) That even if these points were resolved against him, the period of six months would not begin to run until six months after the cessation of the damage or injury to the appellants, which he said was a continuous one.

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I shall deal firstly with the second point argued by Counsel for the appellants, for, if this is answered in his favour, there will be no need to consider the other points raised by him and by the learned Counsel for the respondent. In dealing with this point, I shall also have covered the fifth issue set out earlier in this Judgment. As has been conceded, the Native Authorities Ordinance Cap. 140 is identical with the Public Authorities Protection Act 1893. The learned Author of Halsburys Laws of England Vol. 23, the 1st Edition says at page 343 that :-

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"The act, or omission, need not be directly justifiable, as this would reduce the protection to a nullity. It is sufficient if the defendant has a bona fide belief even without reasonable foundation, in a state of facts which, if true would give him a right to act as he does, or if he acts in pursuance of his office and has an honest intention of putting the law into force."

He must, however, have acted *colore officii* and not for his own benefit; and that act complained of must be in execution of the duty and not merely contemporaneous with such execution."

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Again in paragraph 696 of the same work, the Learned Author says this:-

"In every case the defendant must have acted in good faith."

In the Federal
Supreme Court

In the case of Sharpington v. Fulham Guardian 1904
2 Ch.449 Farwell J. says that:-

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28th January
1963
continued

"Public authorities now perform many functions which compel them to enter into all sorts of contracts; but this is the first time it has been suggested that on any construction the Act could apply to contracts of this nature. The defendants' counsel had not the courage to follow their argument to its logical conclusion, and say that every contract entered into by a public body is within the Act. But every contract entered into by a public body is necessarily in a sense entered into in discharge of a public duty or under statutory authority, for otherwise it would be ultra vires. And I think it would necessarily follow, if I decided in the defendant's favour, that every contract entered into by a public authority is an act done in pursuance of a public duty or authority, and therefore is one to which the Act applies, I do not see where to draw the line."

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The point was, however, found against the defendant. In my view that must be so, for a Contract is not protected merely because it is one entered into by a public authority. As Lord Buckmaster L.C. said in the case of Bradford Corporation v. Myers 1916 A.C. 242 and 247 -

"In other words, it is not because the act out of which an action arises is within their power that a public authority enjoys the benefit of the statute. It is because the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority. I regard these latter words as meaning a duty owed to all the public alike or an authority exercised impartially with regard to all the public."

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As I have said earlier, the Oni of Ife in particular and the respondents in general did not choose to give evidence at the Court of Trial. On the other hand, the appellants have shown that the Oni of Ife is benefited, as the substantial shareholder in the 2nd Respondent Company, by the

contract entered into between the respondents. Equity looks upon such a contract with disfavour in the words of Clausen .J. to which I have already referred, equity does not allow questions to be raised as to the fairness of the Agreement for the inability to contract depends not on the subject matter of the Contract, but the relationships of the parties. In my view, the Native Authority Ordinance does not protect an act such as this, done not in execution of an Ordinance, but in pretended execution of an Ordinance. The Ordinance was never meant to allow a member or members of a public Authority through whom such Public Authority acts to put on the cloak provided by such Ordinance in order to enter into private contracts to the benefit of such member or members. I therefore hold that the defence does not avail the 1st respondent body, and it is not necessary for me to consider the other two points raised by Learned Counsel for the appellants.

In the Federal
Supreme Court

No.13

Judgment

28th January
1963

continued

In my view this appeal must succeed, the decision of the Court below is hereby set aside, and the following order is proposed :-

- (1) The deed of "Concession" dated the 6th January 1954, and registered as No.16 at page 16 in Volume 54 of the Register of Deeds, Lands Registry, Ibadan, is hereby set aside.
- (2) An account of all profits derived by the 2nd respondent pursuant to and by virtue of the said deed as from the said 6th January, 1954, to the date of this Judgment be rendered by the 2nd respondents within 90 days of this Judgment.
- (3) All profits found to have been made by the said 2nd respondents are to be paid into the Ife Divisional Council Treasury.
- (4) An injunction is granted restraining the 2nd respondents from further acting under the said Deed of Concession.

The Appellants are entitled to their costs in this Court which I make payable by the 2nd Respondents only in the sum of 60 guineas and in the Court below at £290. 0. Od., i.e. £250 guineas plus out of pocket expenses of £27.10.0d. I also order that the expenses of the taking of the account

In the Federal
Supreme Court

No.13

Judgment

28th January
1963
continued

be borne wholly by the 2nd respondents.

(Sgd.) John Taylor

FEDERAL JUSTICE.

I concur. (Sgd.) A. Ademola

Chief Justice of the Federation

I concur. (Sgd.) V. Bairemian)

FEDERAL JUSTICE.

R.A. Fani-Kayode Q.C., and O.A. Duduyemi for the
Appellants.
Chief F.R.A. Williams, Q.C. and Mr. G.C. Nzegwu for
the Respondents.

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No.14

Order granting
Final Leave to
Appeal to Her
Majesty in
Council

24th June 1963

No.14

ORDER GRANTING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA,
HOLDEN AT LAGOS.

Suit No. 1/212/1959
F.S.C. 395/1961

Application for an order for final leave to appeal
to the Privy Council

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B E T W E E N :

(L.S.)

THE CARETAKER COMMITTEE
OF IFE DIVISIONAL COUNCIL
AND ANOTHER

In Re: ADERAWOS TIMBER CO. LTD. ... Applicant

- and -

(Sgd.) L.Brett
ACTING CHIEF
JUSTICE OF THE
FEDERATION

BALE ADEDIRE and OTHERS ... Respondents

Monday the 24th day of June, 1963.

UPON READING the Application herein and the
affidavit sworn to on the 29th day of May, 1963,
filed on behalf of the Applicant and after hearing

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Chief F.R.A. Williams, Q.C. (Chief A.A. Adeshigbin with him) of counsel for the Applicant and Mr. J.A. Cole (Mr. L.O. Okunnu with him) of counsel for the Respondents:

In the Federal Supreme Court

No.14

IT IS ORDERED that final leave to appeal to the Privy Council be granted.

Order granting Final Leave to Appeal to Her Majesty in Council

(Sgd.) M. A. Macauley,

CHIEF REGISTRAR.

24th June 1963 continued

E X H I B I T S

EXHIBITS

Exhibit "E"

Exhibit "E".

(Order 80 of 1941 at Page 269 Laws of Nigeria Constituting the Ife Forest Reserve)

Order 80 of 1941 at Page 269 Laws of Nigeria Constituting the Ife Forest Reserve

NIGERIA

ORDER

MADE UNDER
THE FORESTRY ORDINANCE, 1937
(No.38 of 1937)

IFE NATIVE AUTHORITY FOREST RESERVE.

20 The necessary steps having been taken in accordance with Section 23 of the Forestry Ordinance (No.38 of 1937), it is hereby ordered under Section 22 of the said Ordinance by the Native Authority for Ife District of the Ife-Ilesha Division of Oyo Province with the approval of the Governor as follows:

1. This order may be cited as the Ife Native Authority Forest Reserve Order, 1941.

30 2. All that piece of land, the situation and limits of which are set forth in the First Schedule hereto, subject to the rights affecting the same as set forth in the Second Schedule hereto, shall constitute a Native Authority Forest Reserve within the meaning of the said Ordinance, which reserve shall be called the Ife Native Authority Forest Reserve.

Exhibits

Exhibit "E1"

Exhibit "E1"

(Western Region Laws of Nigeria
No.2 of 1954 amending Order 80
of 1941 Laws of Nigeria)

Western Region
Laws of Nigeria
No.2 of 1954
amending Order
80 of 1941 Laws
of Nigeria

B2

W.R.L.N. 2 of 1954

ORDER made under THE FORESTRY ORDINANCE (CAP.75)
IFE DISTRICT NATIVE AUTHORITY FOREST
RESERVE

(AMENDMENT) ORDER, 1953.

In exercise of the powers conferred upon native authorities by Section 26 of the Forestry Ordinance, it is hereby ordered by the Ife District Native Authority with the approval of the Resident, Oyo Province, to whom the power of approval has been delegated as follows:- 10

1. This Order may be cited as the Ife District Native Authority Forest Reserve (Amendment) Order 1953.

Order No. 2. The Ife Native Authority Forest Reserve Order, 1941, is hereby amended by deleting the First and Second Schedules thereto and substituting the following First and Second Schedules therefor:- 20

Exhibit "A"

Exhibit "A"

Agreement Ife
District Native
Authority and
Aderawos Timber
Trading Co.Ltd.
6th January
1954

THIS AGREEMENT made this 6th day of January 1954 between the Ife District Native Authority hereinafter referred to as the Native Authority of the one part and the Aderawos Timber Trading Company Limited registered in Nigeria and having its registered office Iremo Street, Ile-Ife hereinafter referred to as the Company of the other part 30

WITNESSETH that the parties hereto mutually covenant and agree as follows:-

1. IN consideration of the due fulfilment by the Company of all the terms and conditions of this

Agreement the Native Authority in exercise of the powers conferred by Rule 40 of the Forestry (Southern Provinces Native Authorities) Rules 1943 made under the Forestry Ordinance Cap. 75 as amended by Native Authority Public Notice No.58 of 1948 published in the supplement to Gazette No.35 of 1948 hereby grants to the Company subject to the limitations and restriction hereinafter contained and to the provisions of the Forestry Ordinance and the Forestry (Southern Provinces Native Authorities) Rules, 1943, as made by the Ife Native Authority exclusive permission

Exhibits

Exhibit "A"

Agreement Ife District Native Authority and Aderawos Timber Trading Co. Ltd.

6th January 1954
continued

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(a) to enter for the purposes hereinafter stated upon fifty three square miles of forest area described in the Schedule hereto and surrounded by a red line on the map attached as Annexure C and hereinafter referred to as the Concession Area and subject to the provisions of this Agreement to fell any tree of a girth not less than that shown for each species in Annexure B to this Agreement to convert into logs lumber or firewood any tree so felled or any naturally fallen tree and to extract such logs lumber or firewood from the forest within the Concession Area

(b) to make such roads railways and bridges and to erect such buildings as are necessary within the Concession Area for the felling conversion and extraction of all such logs lumber and firewood:

PROVIDED: (a) that nothing in this Agreement shall interfere with the right of any native under the jurisdiction of the Native Authority to take by permit from the Native Authority any tree he may require for his own use or for sale or barter so long as it is converted into lumber or otherwise fashioned or hollowed out for any purpose by hand power only and is not exported from the lands under the jurisdiction of the Native Authority except by the Company

(b) that nothing in this Agreement shall interfere with the right of any native under the jurisdiction of the Native Authority to any free grant of forest produce to which he may have been entitled previous to the signature of this Agreement and subject to the provisions

<p>Exhibits — Exhibit "A" Agreement Ife District Native Authority and Aderawos Timber Trading Co.Ltd. 6th January 1954 continued</p>	<p>of the Forestry Ordinance and the Forestry (Southern Provinces Native Authorities) Rules</p> <p>(c) that the Native Authority on behalf of the Government of the Western Region reserves the right to take such logs lumber or firewood as are required for the essential works of the Native Authority or the Government of the Western Region if the Company cannot supply these requirements on commercial terms but the Native Authority shall only exercise this right in emergency and with the specific approval of the Lieutenant Governor</p> <p>2. This Agreement shall be deemed to have come into force on the first day of April, 1954, and shall unless previously terminated under Clause 13 or Clause 14 terminate on the thirty first day of March, 1979, after the expiry of a period of twenty five years</p> <p>3. The Company shall conform to the prescription of any working or silvicultural control required by a plan of forest management known as the Ife Reserve Working Plan with a rotation of a hundred years and a felling cycle of twenty-five years with control to be exercised by the Chief Conservator of Forests over the Company's fellings by area felled combined with minimum girth limits as laid down in Annexure B to this Agreement below which girth limits trees may not be felled. Regeneration operations shall be carried out by the Native Authority under the supervision of the Chief Conservator of Forests</p> <p>4. The Concession area of fifty three square miles shall be divided nominally into a series of annual coupes each covering two square miles or thereabouts of the Concession Area.</p> <p>5. The Company shall in consultation with and subject to the approval of the Chief Conservator of Forests nominate and demarcate forthwith two annual coupes and shall nominate and demarcate the third and successive annual coupes not later than the first day of April in each subsequent year</p> <p>6. The Company shall enter one annual coupe each year and shall cease felling and abandon all work in the first three annual coupes not later</p>	<p>10</p> <p>20</p> <p>30</p> <p>40</p>
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than the 30th day of September 1958 and, thereafter, in each succeeding coupe on the 30th day of September, of the year following the year of entry into such coupe and all felling and extraction shall cease on the termination of this Agreement. Any timber remaining in a coupe after the Company has abandoned work in that coupe shall be at the disposal of the Native Authority subject to the requirements of the Ife Reserve Working Plan

Exhibits

—
Exhibit "A"

Agreement Ife
District Native
Authority and
Aderawos Timber
Trading Co.Ltd.

6th January 1954

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7. The company shall from the date of demarcation of each annual coupe until felling and extraction operations have been completed in each coupe keep the boundaries of each coupe clean to the satisfaction of the Chief Conservator of Forests. In the event of failure on the part of the Company to carry out this work to the satisfaction of the Chief Conservator, the Chief Conservator or his authorized representative may arrange for the cleaning of the coupe boundaries and the cost shall be recoverable from the Company summarily

continued

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8. The Company shall fell and extract from the forest all merchantable timber as defined in Annexure A to this Agreement in its Concession Area of Fifty-three square miles in such orderly manner as required by the provisions of the Ife Reserve Working Plan during the twenty-five years covered by this Agreement

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PROVIDED that no tree of a girth less than that laid down in Annexure B to this Agreement may be felled

PROVIDED FURTHER that any merchantable timber as defined in Annexure A to this Agreement which is not felled and extracted from the forest shall be paid for as provided under Clause 9

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9. The Company shall pay on demand to the Native Authority fees and royalties assessed at rates in accordance with the Tariff at the time in force under the Forestry Ordinance and Forestry (Southern Provinces Native Authorities) Rules made thereunder by the Ife Native Authority on all logs lumber and firewood felled or cut which is defined as merchantable under Annexure A or which the Company extracts from the forest or sells or uses in the forest

Exhibits

Exhibit "A"

Agreement Ife
District Native
Authority and
Aderawos Timber
Trading Co.Ltd.

6th January
1954

continued

PROVIDED that at the end of each year fees and royalties shall be paid upon the merchantable contents as assessed by the forest officer of any tree of these species defined as merchantable in Annexure A to this Agreement and whose girth exceeds the minimum girth as laid down in Annexure B to this Agreement which is left standing or felled but not extracted from the area when felling is discontinued in an annual coupe under Clause 6.

10. Whereas the Company has furnished to the Native Authority security in the form of a cash deposit of £500 the following provisions shall have effect:- 10

(a) If at the end of twelve months from the date of commencement of this Agreement or at the end of any period of twelve months calculated from the conclusion of such original period of twelve months or of any subsequent such period the total fees and royalties paid by the Company for lugs lumber or firewood felled in the Concession Area shall fall short of an amount of £640 multiplied by the number of square miles worked during any such period of twelve months in the Concession Area a sum equivalent to the amount of the shortage shall be released from the security and paid over to the Native Authority and the Company shall make an immediate cash deposit to restore the security to the original amount of £500. 20

(b) On the termination of this Agreement the balance if any of the deposit shall be refunded to the Company after payment of all amounts due to the Native Authority under Clauses 9 and 10(a). 30

11. When at the end of each period of one year from the date of commencement of this Agreement the aforementioned minimum payment for each square mile of forest of the Concession Area worked has not been realised but the Company alleges that it was only prevented from felling as much timber as would have produced such minimum sum by reason of the impoverishment of the forest by past fellings before the commencement of this Agreement or by the intrinsic poverty of the timber contents of the forest, the case shall be submitted to the 40

Chief Conservator of Forests who will if satisfied authorise a reduction of the rate of payment to the square mile so that the Company is not penalised by circumstances beyond its control.

12. Whereas the Company has also furnished to the Native Authority adequate security for the payment of a sum of £1250 the following provisions shall have effect:-

10 (a) If the Company abandons timber operation in its Concession Area before the expiry of this Agreement it shall pay to the Native Authority or to the Government of the Western Region acting on behalf of the Native Authority by way of agreed damages the sum of £50 in respect of each coupe in which all merchantable timber has not been worked out in accordance with the terms of Clause 8.

20 (b) On the completion of work as defined in Clause 8 in each coupe £50 of the security shall be released to the Company.

13. The Native Authority with the approval of the Lieutenant Governor may terminate this Agreement (excluding the provisions of Clause 15)

30 (a) If the Company its agents or servants or workmen fail to observe any term or condition of this Agreement to an extent which in the opinion of the Lieutenant-Governor with the advice of the Chief Conservator of Forests to whom the matter shall be submitted renders impossible the proper working of the Ife Reserve Working Plan

40 PROVIDED that if the Native Authority terminates the Agreement as herein provided on account of the failure of the Company to the extent hereinbefore mentioned to observe the terms of Clause 8 requiring the Company to fell and extract or pay for as provided under Clause 9 all merchantable timber in its Concession Area the Company shall be deemed to have abandoned timber operations and the provisions of Clause 12 shall thereupon have effect

Exhibits

—
Exhibit "A"

Agreement Ife
District Native
Authority and
Aderawos Timber
Trading Co.Ltd.

6th January 1954
continued

Exhibits

(b) If the Company becomes insolvent or its business shall be wound up or go into liquidation.

Exhibit "A"

Agreement Ife District Native Authority and Aderawos Timber Trading Co.Ltd.

6th January 1954 continued

14. The Company may terminate this Agreement excluding the provisions of Clause 15 at any time by giving the Native Authority six months notice in writing of its intention to do so and by meeting all liabilities including the agreed damages payable under Clause 12.

15. On the conclusion of the period specified in Clause 2 or on the termination of this Agreement under Clause 13 or Clause 14 as the case may be the Company shall be given such reasonable time as in the opinion of the Native Authority and Chief Conservator of Forests is necessary to allow it to dispose of such buildings mills railways wharfs or other structures erected for the purposes of its business under this Agreement as are standing on land within the Concession Area. Any such buildings mills railways wharfs or structures not disposed of by the Company within the reasonable time allowed under this Clause shall become the property of the Native Authority. 10 20

16. The rights conferred by this Agreement shall not be transferred by the Company wholly or in part for all or any part of the period of this Agreement except with the consent of the Native Authority and the Chief Conservator of Forests.

IN WITNESS WHEREOF the Oni of Ife and Council for and on behalf of the Ife District Native Authority and as the traditional Authority on behalf of the Communal Owners of the land and the Aderawos Timber Trading Company Limited have hereunder set their hands and seals the day and year first above written 30

Signed by the said (Sgd.) Aderemi ONI OF IFE

Sgd. Onitiju Chief Obaloran

(Sgd.) ? ? ?

(Sgd.) J.P.Ajaiyi

(Sgd.) ? ? ?

FOR THE ONI AND COUNCIL

Authorised to sign by Standing Rules dated the 14th day of December, 1949.

Exhibits

Exhibit "A"

In the presence of: (Sgd.) ? ? ?

The Common Seal of the said Aderawos Timber Trading Company Limited was hereunto affixed
6/1/54

Agreement Ife District Native Authority and Aderawos Timber Trading Co.Ltd.

In the presence of us: (Sgd.) ? ? ?

(Sgd.) ? ? ?

Managing Director

(Sgd.) ? ? ?

Secretary

6th January 1954
continued

10

In the presence of: (Sgd.) ? ? F.O. Oyo/
Ibadan Province.

Approved: (Sgd.) ? ? ?
Lieutenant-Governor
Western Region.

Date: 23rd April 1954.

SCHEDULE

Concession Area

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The Concession Area comprises those parts of the lands which lie within the boundaries of the Ife Native Authority Forest Reserve as those boundaries are published on final consolidation of that Reserve in the Western Regional Gazette which lands are shown surrounded by a red line on the map attached hereto as Annexure C and which are known as Timber Area Ife 3.

(Sgd.) ? ? ?

ANNEXURE A

Definition of Merchantable Timber

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(1) The terms of this Annexure may be amended from time to time by agreement between the Company and the Native Authority acting under the advice of the Chief Conservator.

(2) Merchantable timber is defined as a

Exhibits
 ———
 Exhibit "A"
 Agreement Ife
 District Native
 Authority and
 Aderawos Timber
 Trading Co.Ltd.
 6th January
 1954
 continued

straight log of any tree of the undernoted
 obligatory species not less than 12 feet long and
 not less in girth measured under bark at its small
 end than the girth which is shown below against
 its particular species or
 a straight log not less than 12 feet long and not
 less than 7 feet in girth measured under bark at
 small end in the case of logs from any tree of a
 species not listed below when any such tree is
 felled by the Company.

10

Species	Minimum Merchantable Girth at Small End
<i>Entandrophragma cylindricum</i> Sprague	6 feet
<i>Entandrophragma angolense</i> var. <i>macrophyllum</i> (A.Chev.)Harms	6 "
<i>Entandrophragma candollei</i> Harms	6 "
<i>Khaya ivorensis</i> A. Chev.	5 "
<i>Khaya grandifoliola</i> C. DC.	5 "
<i>Lovoa klaineana</i> Pierra ex Sprague	5 "
<i>Chlorophora excelsa</i> Benth. & Hook.F.	6 "
<i>Sarcocephalus diderrichii</i> De Wild.	5 "
<i>Guarea thompsonii</i> Sprague & Hatch.	6 "
<i>Guarea cedrate</i> (A.Chev.) Pellegrin	6 "
<i>Cistanthera papaverifera</i> A.Chev.	6 "
<i>Terminalia ivorensis</i> A. Chev.	5 "
<i>Triplochiton Scleroxylon</i> K.Schum.	6 "
<i>Gossweilerodendron balsamiferum</i> Harms.	7 "
<i>Mansonia altissima</i> A. Chev.	6 "
<i>Azelia africana</i> Smith	7 "

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30

(Sgd.) ? ? ?

PROVIDED: (i) That any log with the following
 or less than the following deviations from the
 straight shall be considered straight for the
 purposes of the above definition.

(a) For logs below 8 feet midgirth under bark a
 maximum deviation of $\frac{1}{4}$ inch multiplied by the
 number of feet in length of the log.

(b) For logs from 8 feet to 10 feet midgirth
 under bark a maximum deviation of $\frac{1}{2}$ inch multi-
 plied by the number of feet in length of the log.

40

(c) For logs from 10 feet 1 inch to 12 feet mid-
 girth under bark a maximum deviation of $\frac{3}{4}$ inch
 multiplied by the number of feet in length of the
 log

(d) For logs over 12 feet 1 inch midgirth under bark a maximum deviation of 1 inch multiplied by the number of feet in length of the log.

Exhibits

Exhibit "A"

The above allowances refer to logs which deviate from the straight in one direction only. If a log deviates from the straight in two opposite directions the log shall only be classed as straight if the sum of the maximum deviations from the straight in each direction is not greater than the allowances stated above.

Agreement Ife
District Native
Authority and
Aderawos Timber
Trading Co.Ltd.

6th January 1954
continued

10

(ii) That if a tree is not so crosscut as to ensure that as much merchantable timber as possible is obtained from it its merchantable contents shall be assessed as if it had been so crosscut.

(iii) That a log shall not be classed as merchantable if in the case of a log less than 9 feet midgirth under bark more than one third of its volume is subject to major defects as defined in section 3 of this Annexure or in the case of a log more than 9 feet midgirth under bark more than half its volume is subject to the said major defects.

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(iv) That a log shall not be classed as merchantable if the volume of its heartwood is less than two thirds of the volume of the log under bark.

(v) That a log shall not be classed as merchantable if the diameter of any Branch Knot Decayed Knot or Hole or Decayed Burr or the sum of the diameters of such defects exceeds half the gross diameter of the log under bark at its small end. Pin Knots shall not be considered a defect.

30

(3) Major defects for the purpose of Proviso (iii) to Section 2 of this Annexure are the following:-

(i) Heartshake Heart decay Holes Splits Shatters Calcification Dry rot Decay and Parasitic damage measured by the volume of timber affected by such defect

40

(ii) Ringshake measured by the volume of timber outside the Ringshake where the Ringshake is nearer

<p>Exhibits <u> </u> Exhibit "A"</p> <p>Agreement Ite District Native Authority and Aderawos Timber Trading Co.Ltd.</p> <p>6th January 1954 continued</p>	<p>the circumference of the log than the centre or within the Ringshake if the Ringshake is nearer the centre than the circumference of the log:</p> <p>PROVIDED that where a log has two or more defects none of which in itself would exclude a log from classification as merchantable under Section 2(iii) of this Annexure the log shall not be classified as merchantable if the total volume of timber subject to such various defects is greater than one third of its gross volume in the case of logs less than 9 feet midgirth under bark or than one half of the gross volume in the case of logs more than 9 feet midgirth.</p> <p>(4) The volume of merchantable timber shall be assessed in cubic feet by multiplying the length of the log measured from end to end of its shortest length to the nearest foot by the square of the quarter girth measured under bark at the middle point between the two ends of the log in inches to the nearest inch the quotient being divided by one hundred and forty-four. The girth of a log misshapen at its midpoint shall be the average of its girths on either side of the malformation. A fluted log may be trimmed so that its true girth can be measured.</p> <p>PROVIDED that the volume of timber not classified as merchantable under this Annexure but nevertheless removed from the forest or sold in the forest by the Company shall be measured or assessed as true volume of sound timber free from defects as defined in Section 3 and from Branch Knots Decayed Knots or Holes or Decayed Burrs but Sapwood shall not be classed as a defect for the purpose of this Proviso if the timber is removed from the forest or sold in the forest together with its sapwood.</p> <p style="text-align: center;"><u>ANNEXURE B</u></p> <p>The minimum girths shown in the following Schedule may for silvicultural reasons be amended from time to time by the Native Authority acting under the advice of the Chief Conservator of Forests.</p>	<p>10</p> <p>20</p> <p>30</p> <p>40</p>
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(Continued)

	<u>Species</u>	<u>Minimum girth</u> <u>in feet</u>	<u>Exhibits</u>
	Entandrophragma cylindricum	10	Exhibit "A"
	" angolense var.		
	" macrophyllum	9	Agreement Ife
	" candollei	9	District Native
	Kyaya invorensis	9	Authority and
	" grandifoliola	9	Aderawos Timber
	Lovoa klaineana	9	Trading Co.Ltd.
10	Chlorophora excelsa	10	6th January 1954
	Sarcocephalus diderrichii	9	continued
	Guarea thompsonii	9	
	" cedrate	9	
	Cistanthera papaverifera	9	
	Terminalia ivorensis	8	
	Triphlochiton scleroxylon	9	
	Gossweilerodendron balsamiferum	10	
	Mansonia altissima	8	
	Afzelia spp.	8	
20	Terminalia superba	8	
	Piptadenia africana	8	
	Distemonanthus benthamianus	8	
	Canarium schweinfurthii	8	
	Cylicodiscus gabonensis	8	
	Daniellia ogea	9	
	Anthiaris africana	8	
	Pterrocarpus spp.	8	
	Pycnanthus angolensis	8	
	All other species	No minimum girth limit.	
30	<u>Definition:-</u> "Girth" means the circumference of a tree measured either at a height of four feet six inches from the ground, or, if the tree is buttressed above that height, measured at one foot above the point where the highest buttress merges with the bole.		

(Sgd.) ? ? ?

40 In exercise of the power delegated to me in this behalf, I hereby reduce to £1 the fee payable for the registration of this Instrument under the Land Registration Ordinance (Cap.108 of the Laws of Nigeria).

Dated the 2nd day of July, 1954

(Sgd.) ? ? ?

Regional Land Officer,
Western Region.

IN THE PRIVY COUNCIL

No.33 of 1963

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

B E T W E E N

ADERAWOS TIMBER COMPANY LIMITED

Defendants/
Appellants

- and -

1. BALE ADEDIRE
2. AWE ADENIJI
3. SAMUEL ADETUNJI
4. EMAN. ADEYEMO
5. E.T. ADEWOYIN
5. S. GIWA
7. B.F. SHOBALOU

Plaintiffs/
Respondents

- and -

THE CARETAKER COMMITTEE OF THE
IFE DIVISIONAL COUNCIL

Defendants/
Respondents

Proforma

RECORD OF PROCEEDINGS

Hatchett Jones & Co.,
90, Fenchurch Street,
London, E.C3

Solicitors for the Appellants